100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 100-816
Part 1

UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

AUGUST 3, 1988.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 5090 which, on July 26, 1988, was referred jointly to the Committee on Ways and Means, the Committee on Agriculture, the Committee on Banking, Finance and Urban Affairs, the Committee on Energy and Commerce, the Committee on Foreign Affairs, the Committee on Government Operations, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5090) to implement the United States-Canada Free-Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF H.R. 5090, THE "UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988"

H.R. 5090, the "United States-Canada Free-Trade Agreement Implementation Act of 1988," approves the U.S.-Canada Free-Trade Agreement transmitted by the President to the Congress on July 25, 1988. The draft bill contains in five titles the provisions which are necessary and appropriate to implement the Agreement in U.S. domestic law.

Sections 1 and 2 set forth the short title, a table of contents, and the purposes of the Act.

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TITLE I. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

Title I contains general provisions concerning approval and entry into force of the Agreement and the relationship of the Agreement to U.S. laws. The Agreement, certain accompanying exchanges of letters, and the Statement of Administrative Action submitted to the Congress on July 25, 1988, are approved, and conditions for entry into force of the Agreement on or after January 1, 1989 are set forth.

U.S. laws prevail over the Agreement if there is a conflict; the Agreement prevails over any conflicting State or local law. No person other than the United States has a cause of action or defense under the Agreement.

Changes in U.S. law necessary or appropriate to implement an amendment to the Agreement may be approved under "fast track" Congressional procedures during the 30-month period after the Agreement enters into force. Certain provisions of the Act authorizing implementation of actions by Presidential proclamation are subject to prior consultation and 60 calendar day Congressional layover requirements.

Authority is given to proclaim implementation of U.S. obligations under the Agreement in terms of the Tariff Schedules of the United States if the Harmonized System is not implemented prior to entry of the Agreement into force.

TITLE II. TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

Title II implements in U.S. domestic law the customs provisions of the Agreement. The President is authorized to proclaim the modifications in U.S. duties to implement the scheduled phaseout and elimination of all tariffs on U.S.-Canada trade within 10 years, and to maintain the general level of concessions. The rules of origin in the Agreement to ensure application of preferential tariff treatment only to goods originating in Canada are enacted in the statute.

U.S. obligations under the Agreement to phase out customs user fees on Canadian goods, to eliminate drawback with certain exceptions, and to exempt Canada from the lottery ticket embargo are implemented in domestic law, penalties and recordkeeping requirements are provided to enforce the rule of origin requirement, and a reporting and monitoring requirement of the consistency of Canadian production-based duty remission programs with the GATT and the Agreement.

TITLE III. APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

Title III implements in U.S. domestic law various provisions of the Agreement concerning particular economic sectors, including agricultural products, procedures and criteria for application of bilateral and global import relief measures on Canadian articles, exports to Canada of Alaskan oil, exemption of Canadian uranium from U.S. enrichment restrictions, a lower contract threshold for exemption from Buy American restrictions of certain government procurement from Canada, temporary entry of business persons,

and extension of financial services. In addition, various U.S. negotiating objectives to expand the Agreement are set forth with respect to services, investment, intellectual property rights, automotive products, procurement, Canadian agricultural transportation subsidies, potato trade, and enforcement of U.S. rights against Canadian controls on fish, and a clarification that the Agreement does not preclude voluntary restraint agreements on steel products.

TITLE IV. BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

Title IV implements in U.S. domestic law the institutional provisions of the Agreement establishing binational panel and extraordinary challenge committee review of final antidumping and coutervailing duty determinations, in lieu of judicial review, including procedures and criteria for the selection of panelists appointed by the United States, establishment of the U.S. Secretariat, and authorizations of appropriations for administrative expenses. Objectives and authority to negotiate an agreement on subsidies and special procedures for industries facing subsidized competition pending development of subsidy rules are also included.

TITLE V. EFFECTIVE DATES AND SEVERABILITY

Title V sets forth the effective dates of the various provisions of the Act, and provides for the severability of any provision or amendment held to be invalid from the remainder of the Act.

BACKGROUND AND PURPOSE

The United States-Canada Free-Trade Agreement submitted to the Congress by the President for approval on July 25, 1988, represents the culmination of a negotiating process of more than three years. In March 1985, President Reagan and Prime Minister Mulroney directed their respective trade officials to explore ways to liberalize barriers between the two countries. On September 26, 1985, Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." On September 10, President Reagan notified the House Committee on Ways and Means and the Senate Committee on Finance of the Administration's desire to enter into bilateral trade negotiations with Canada, pursuant to section 102 of the Trade Act of 1974. This notification began a consultative process with the committees of jurisdiction in the Congress that continued throughout the negotiations and the development of implementing legislation.

In May 1986, U.S. and Canadian negotiators met for the first time and reached agreement on the framework for a comprehensive agreement. On October 3, 1987, President Reagan submitted the 90-day advance notice to the Congress required under section 102 of his intention to enter into a Free-Trade Agreement with Canada on January 2, 1988 (the last day before expiration of the section 102 authority), "contingent upon successful completion of the negotiations." On January 2, 1988, President Reagan and Prime Minister Mulroney entered into the United States-Canada Free-Trade Agreement on behalf of their respective Governments.

On February 17, 1988, letters were exchanged between the Secretary of the Treasury and the U.S. Trade Representative (USTR), the Speaker of the House, Majority Leader of the Senate, and the Chairman of the House Committee on Ways and Means and the Senate Committee on Finance concerning the procedures and timing for implementing the Agreement. In these understandings, the Administration agreed not to submit the implementing legislation to Congress prior to June 1, 1988, or a mutually agreed earlier date, so that the necessary preparatory work on developing the bill could take place as a cooperative effort between the Administration and the Congress as in past practice under the "fast track" procedure. The Administration also undertook the commitment to accept the provisions worked out in the consultative process, provided they were consistent with the Agreement and its implementation and appropriate to carrying out its fundamental purposes. The House and Senate leadership committed that each House of the Congress would vote on the implementing legislation submitted by the President, without amendment, no later than the end of the 100th Congress and would use best efforts to expedite the process and vote in each House before the August recess, if at all possible. On May 12, the Speaker of the House sent a letter to the Secretary of the Treasury and the USTR advising them of the appropriate jurisdictions of eight committees of the House to assist in the consultative process on the implementing legislation: Ways and Means; Judiciary; Agriculture; Energy and Commerce; Foreign Affairs; Interior and Insular Affairs; Government Operations; and Banking, Finance, and Urban Affairs.

The Members and trade staff of the Committee on Ways and Means have consulted extensively with officials in the Administration, particularly staff of the Office of the USTR, throughout the negotiating process and in developing a draft text of implementing legislation concerning provisions within the jurisdiction of the Committee, and in concert with other committees of joint jurisdiction and the Senate Committee on Finance. The Committee believes that, as in the past, the "fast track" consultative process has worked extremely well and that the close consultative and cooperative effort between the Administration and the Congress ensures the success of this unique procedure to implement international trade agreements. As a result of this cooperative effort, it was possible to develop a bill for submission to the President that balances all interests by fully implementing U.S. international obligations consistent with the Agreement and, at the same time, providing safeguards for the few domestic industries that believe they may be adversely affected by increased competition.

On July 14, 1988, the Speaker of the House and the Majority Leader of the Senate each transmitted proposed implementing legislation to the Secretary of the Treasury and the USTR that resulted from the consultative process. On July 25, President Reagan submitted to the Congress, pursuant to section 102 of the Trade Act of 1974, the final legal text of the Agreement, the proposed implementing legislation, the Statement of Administrative Action, and a statement of how the Agreement serves the interests of U.S. commerce (House Document 100–216). As provided under section 151 of the Trade Act, the implementing legislation was introduced in the

House on July 26 by the Majority and Minority Leaders as H.R. 5090 and jointly referred to the eight committees of jurisdiction. The bill was introduced in the Senate on July 25 as S. 2651 and referred to five committees of jurisdiction.

BENEFITS OF THE AGREEMENT

The United States-Canada Free-Trade Agreement is truly historic as one of the most comprehensive bilateral trade agreements ever negotiated and that creates one of the world's largest internal markets for goods and services. At the same time, the Agreement does not create any new trade barriers with third countries and is intended to provide a catalyst for negotiations to liberalize trade barriers on a multilateral basis.

Each year the United States and Canada exchange more goods and services than any other two nations in the world. Bilateral trade in goods and services totalled $166 billion in 1987. About 75 percent of Canada's total exports of merchandise and about 68 percent of its total imports are accounted for by the United States; the United States sells 24 percent of its merchandise exports to Canada and purchases 17 percent of its total imports from Canada. Total bilateral foreign direct investment exceeds $68 billion.

A cornerstone of the Agrement will be that phased out elimination of all tariffs on bilateral trade within ten years. Canadian tariffs on U.S. dutiable exports presently average 9.9 percent, compared to an average U.S. tariff of 3.3 percent on dutiable imports from Canada. The Agreement also reduces a number of nontariff barriers to bilateral tade, liberalizes certain restrictions on investment and services, and establishes a new binational system for review of national determinations on unfair pricing and subsidy practices. As described in the statement accompanying the President's submission of the draft implementing bill, the expanded market access under the agreement should result in substantial benefits for the United States economy.

A free trade area is an arrangement between two or more countires in which each removes tariff and other restrictions on trade with the other parties to the arrangement. Article XXIV of the General Agreement on Tariffs and trade (GATT) permits free trade area or customs unions as a deviation from the nondiscrimination, most-favored-nation (MFN) principle of Article I if the agreement meets certain criteria. GATT-approved free trade areas (1) must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than the parties had in place prior to the agreement.

The free trade Area Agreement between the United States and Israel was the first comprehensive free trade arrangement entered into by the United States with any country. The Caribbean Basin Initiative authorized by the Caribbean Basin Economic Recovery Act (Public Law 98–67) provides one-way duty-free entry into the United States but does not meet the criteria of a reciprocal free trade area.

LEGISLATIVE AUTHORITY

The United States-Canada Free-Trade Agreement was negotiated and entered into under the trade agreement authority of section 102 of the Trade Act of 1974 (Public Law 93–618). That authority expired on January 3, 1988. Section 401 of the Trade and Tariff Act of 1984 (Public Law 98–573) amended section 102 to include authority for the President to enter into bilateral trade agreements with foreign countries to eliminate or reduce tariffs on bilateral trade as well as nontariff barriers, if the following procedural requirements were met:

(1) The foreign country requested the negotiation of a bilateral agreement;

(2) The President provided at least 60 legislative days advance notice of negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consulted with the Committees regarding negotiation of such an agreement; and

(3) Neither of the two Committees disapproved of the negotiation of such an agreement before the end of that 60-day period.

Agreements entered into under section 102 authority were subject to approval and implementation under the special "fast track" procedures for Congressional consideration of implementing legislation in the rules of the House and Senate under section 151 of the Trade Act of 1974.

An agreement negotiated under section 102 authority could not enter into force for the United States and become binding as a matter of domestic law unless the President adhered to certain requirements for presentation to the Congress and implementing legislation approving the agreement and any changes in U.S. law was enacted into law. Sections 102(c)–(f) and 151–154 prescribe the following expedited procedures for Congressional approval:

(1) Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over subject matters affected by the agreement, especially regarding issues of implementation.

(2) The President must give the Congress at least 90 days advance notice of his intention to enter into the agreement.

(3) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate.

(4) The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President and referred to the committee or committees of jurisdiction. The committees have 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period.

(5) Each House votes on the bill within 15 legislative days after committee consideration. A motion in the House to proceed to consideration of the implementing bill is highly privileged and not debatable. Amendments or motions to recommit are not in order, and debate is limited to not more than 20 hours.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance. At the same time, the process ensures the Executive branch and foreign countries of expeditious action on the final agreement and implementing bill without amendments. This process was used successfully in approving the Tokyo Round trade agreements in the Trade Agreements Act of 1979 and the United States-Israel Free Trade Area Implementation Act of 1985.

Committee Action

The President notified the Committee on Ways and Means on December 10, 1985, of his intention to enter into negotiations with the Government of Canada on a comprehensive free trade arrangement under the "fast track" trade agreement authority under section 102 of the Trade Act of 1974. This notice, required under section 102(b)(4), as amended by section 401 of the Trade and Tariff Act of 1984, triggered the 60 legislative day period under that provision under which either the Committee on Ways and Means or the Senate Committee on Finance could disapprove of such negotiations.

In order to help provide a basis for the Committee's decision as to whether the negotiations should proceed, the Subcommittee on Trade issued a press release on March 5, 1986, requesting written public comments on the broad implications of a comprehensive bilateral agreement on U.S. trade policy, its likely effect on particular U.S. industries, and the specific issues that should be addressed in the negotiations (WMCP: 99–16, April 8, 1986). The U.S. Trade Representative also consulted informally with the Committee during this period on the advisability of entering negotiations. The 60-day period expired with neither Committee disapproving the negotiations.

Following the signing of the final text of the Agreement by President Reagan and Prime Minister Mulroney on January 2, 1988, at the conclusion of the 90-day period provided under section 102(e) of the Trade Act for consultations with Congressional committees, the Subcommittee on Trade held six days of public hearings on the proposed agreement and its implementation. These hearings were held on February 9, 26, 29, March 1 and 25 in Washington, D.C., and on March 11 in Fargo, North Dakota. Extensive testimony was received from a broad range of witnesses including Administration

officials who negotiated the Agreement on behalf of the United States, Members of Congress, representatives of business associations, labor unions, and individual firms in various sectors of the economy with trade, investment, or energy interests. The testimony generally supported the Agreement. Reservations or opposition were expressed by representatives of certain economic interests or sectors on particular issues. A number of these concerns were addressed by the Committee in the development of the proposed implementing bill and the Statement of Administrative Action.

On May 3, 5, 10, and 11, 1988, the Subcommittee on Trade held informal conceptual markup sessions based on a draft implementing proposal prepared by the Administration. On May 17, the full Committee held an informal markup session and approved draft legislation reported by the Subcommittee to implement provisions within the Committee's jurisdiction by voice vote, with amendments.

On May 25 and 26, Members of the Subcommittee on Trade and Senate Committee on Finance met in informal conference to resolve differences in the draft implementing recommendations reported by the two Committees. These differences were resolved with two exceptions, as described in a joint press release issued on May 27.

On July 14, 1988, the Committee on Ways and Means approved by voice vote a recommended text of implementing legislation for submission to the Administration, developed with the Senate Committee on Finance, the Administration, and other Congressional committees of joint jurisdiction on provisions within the jurisdiction of the Committee on Ways and Means.

On August 3, the Committee on Ways and Means ordered reported H.R. 5090, to implement the United States-Canada Free-Trade Agreement, submitted by the President to the Congress pursuant to section 102 of the Trade Act on July 25, 1988, by a record vote of 35 yeas, 1 noe.

Section-by-Section Analysis, Justification, and Comparison With Present Law

H.R. 5090 was referred to eight committees in the House with jurisdiction over particular provisions of the bill. The Committee on Ways and Means was assigned jurisdiction on all provisions of the bill (some provisions jointly with other committees), except those sections dealing with the importation of animal vaccines and seeds (section 301(d) and (e)); plant and animal health regulations (section 301(f)); energy (section 305); temporary entry of business persons (section 307); and financial services (section 308). The following analysis covers only those provisions of H.R. 5090 as ordered reported by the Committee on Ways and Means within its jurisdiction.

Section 1. Short Title and Table of Contents

Section 1 contains the short title of the Act, which may be cited as the "United States-Canada Free-Trade Agreement Implementation Act of 1988", and sets forth the table of contents of the bill.

Section 2. Purposes

Section 2 describes the purposes of the Act. These purposes are (1) to approve and implement the U.S.-Canada Free-Trade Agreement; (2) to strengthen and develop U.S.-Canada economic relations for their mutual benefit; (3) to establish a free trade area between the two nations; and (4) to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

TITLE I. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

Title I of H.R. 5090 contains provisions of general application approving the Agreement, establishing the relationship of the Agreement to U.S. laws, and setting forth the procedures for implementing actions under, or future changes in, the Agreement in U.S. law.

Section 101. Approval of United States-Canada Free-Trade Agreement

Section 101 of H.R. 5090 contains the basic provisions necessary for entry into force of the Free-Trade Agreement between the United States and Canada. Under subsection (a), and pursuant to sections 102 and 151 of the Trade Act of 1974, the Congress approves the Agreement entered into on January 2, 1988, two accompanying exchanges of letters between the two governments on that date, and the Statement of Administrative Action proposed to implement the Agreement, all submitted to the Congress on July 25, 1988.

Subsection (b) authorizes the President to exchange notes with the Government of Canada providing for the entry into force of the Agreement with respect to the United States, on or after January 1, 1989, at such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement. Article 2105 of the Agreement requires that the Parties exchange diplomatic notes certifying that they have each completed necessary legal procedures for entry into force of the Agreement. Subsection (b) provides for entry into force with respect to the United States on January 1, 1989, as provided under Article 2105, if the President first determines that Canada has also taken the measures necessary to comply with its obligations. Subsection (b) also permits entry into force subsequent to January 1, 1989, if the necessary domestic implementation procedures have not been completed in both countries by that date. This provision and section 501, which makes the implementation of changes in U.S. law under the bill effective only upon entry into force of the Agreement obligations, are intended to ensure that the United States does not extend the benefits under the Agreement to Canada unless and until Canada also implements the benefits for the United States. Agreement obligations include ensuring compliance by provincial, State, and local governments.

Subsection (c) requires the U.S. Trade Representative (USTR) to submit to the Congress within 60 days after date of enactment, but no later than December 15, 1988, a report identifying to the maximum extent practicable major current Canadian practices and their legal authority that in the opinion of the USTR require a

change of Canadian law, regulation, policy, or practice to bring them into conformity with Canada's obligations under the Agreement. The purpose of this report is to aid in determining whether Canada, at both the Federal and provincial government level, has implemented its reciprocal obligations under the Agreement and met the conditions under subsection (b) for entry into force of the Agreement by the United States.

The Committee believes that approval of the United States-Canada Free-Trade Agreement as submitted is in the U.S. national interest for the reasons cited in the President's transmittal message and described under the Background and Purpose section of this report. This particular Agreement, however, was negotiated with a major trading partner and neighbor in the context of a long history of close bilateral political, economic, and cultural relations. The provisions of the Agreement are tailored to address the particular interests and concerns of the two countries. Therefore, this Agreement and its specific provisions should not necessarily serve as a precedent or model for either bilateral or multilateral agreements with other countries negotiated in other contexts and situations. Nor does approval of this Agreement imply Committee approval of any future bilateral free trade agreements with other countries, each of which must be judged in the particular circumstances and on its individual merits.

Section 102. Relationship of the Agreement to United States Law

Section 102 of H.R. 5090 establishes the relationship between provisions of the Agreement and U.S. domestic laws, and the legislative procedures for considering any future changes to U.S. laws to implement the Agreement. Subsection (a) provides that no provision of the Agreement nor the application of any provision which is in conflict with any U.S. law shall have effect, i.e., U.S. laws shall prevail if in conflict with any provision of the Agreement. The implementing bill makes all amendments or additions to Federal laws known to be necessary or appropriate to enable full implementation of, and compliance with, U.S. obligations under the Agreement. Most existing U.S. laws do not need to be amended because they do not require actions inconsistent with U.S. obligations under the Agreement. In the unlikely event that any future changes in Federal statutes should be necessary to remedy an unforeseen conflict between requirements of a Federal law and the Agreement, such changes can be enacted in subsequent remedial legislation, including through the "fast track" procedures authorized under subsection (e). This treatment is consistent with the Trade Agreements Act of 1979 implementing the Tokyo round of multilateral trade negotiations and the U.S.-Israel Free Trade Area Implementation Act of 1985, both of which provide that U.S. laws prevail over any conflicting provision of the international agreements.

As provided in subsection (b), provisions of the Agreement will prevail over any conflicting State or local law, including any State law regulating or taxing the business of insurance, or any conflicting application of such law, to the extent of the conflict. The President shall initiate consultations with State governments on the implementation of U.S. obligations under the Agreement through the intergovernmental trade policy advisory committees established

under section 306(c)(2)(A) of the Trade and Tariff Act of 1984 to achieve conformity of State laws and practices with the Agreement and shall consult with individual States as necessary to deal with particular questions that may arise. The United States may challenge any provision of State law or its application on the ground that the provision or application is inconsistent with the Agreement, in the event that consistency is not achieved through consultations.

These provisions implement the obligation under Article 103 of the Agreement for both Parties to take all necessary steps to ensure observance of provisions by State, provincial, and local governments, and are consistent with the Constitutional preemption doctrine. As stated in the Statement of Administrative Action, the Attorney General would consider the advice of the USTR on whether the Canadian government has objected to the particular State measure and on the extent to which Canada has assured conformity of provincial measures with the Agreement in determining whether to bring a court action against the State measure. No problems with State measures are anticipated and court action would be only a last resort.

Subsection (c) provides that no person other than the United States shall (1) have any cause of action or defense under the Agreement or by virtue of Congressional approval of the Agreement, or (2) challenge, in any action brought under any provision of law, any action or inaction by any Federal, State, or local government department or agency, on the ground that such action or inaction is inconsistent with the Agreement. In other words, a private party does not have the right to sue a Federal, State, or private party (or raise a defense against such a party in a suit) on grounds of consistency or inconsistency with the Agreement. Also, there is no private right of action to challenge, under any other organic law, any action or inaction by the United States or a State or local government on the ground that it is inconsistent with the Agreement. For example, a private party cannot bring an action to require, preclude, or modify government exercise of discretionary or general "public interest" authorities under other provisions of law. These prohibitions are based on the premise that it is the responsibility of the Federal Government as set forth in subsection (b) described above, and not private citizens, to ensure that State laws are consistent with the Agreement.

This general prohibition on private right of action based on the Agreement or its approval by Congress under section 101(a) does not preclude the right to challenge on constitutional grounds certain provisions in section 516A(g)(4) of the Tariff Act of 1930 as added by section 401(c) of the implementing bill. Nor does the prohibition address the question of a private right of action based on provisions of this Act other than section 101(a) of the implementing bill.

Subsection (d) requires that initial implementing regulations necessary or appropriate to carry out actions proposed in the Statement of Administrative Action be issued, to the maximum extent feasible, within one year after the Agreement enters into force, or within one year after the effective date of any implementing action that takes effect after entry into force.

Subsection (e) applies the special so-called "fast track" requirements and procedures of section 3(c) of the Trade Agreement Act of 1979 (Public Law 96-39) to Congressional approval of any amendment, repeal, or enactment of a U.S. statute that the President determines to be necessary or appropriate to implement a requirement of, amendment to, or recommendation under the Agreement subsequent to enactment of H.R. 5090. These procedures could be used, for example, to conform U.S. law to any future changes that might be made in the Agreement or to comply with the decisions of dispute settlement proceedings under the Agreement.

These "fast track" procedures shall not apply, however, to any bill submitted to the Congress more than 30 months after the Agreement enters into force. Congress intends this time limit on the use of the "fast track" to provide incentive for both countries to reach expeditious agreement on the expansion of obligations in areas not addressed or insufficiently covered by the present Agreement, particularly those areas on which negotiating objectives are outlined in section 304 of the implementing bill and more effective rules on subsidy practices.

Section 3(c) of the Trade Agreements Act of 1979 requires the President, at least 30 days before submitting a draft bill and statement of any proposed administrative action to implement a requirement, amendment, or recommendation of an agreement, to consult with the House Committee on Ways and Means and the Senate Committee on Finance, as well as with any other House or Senate committee of jurisdiction, on all matters relating to implementation. The bill submitted by the President is subject to consideration by the Congress under the same "fast track" rules of section 151 of the Trade Act of 1974 as apply to the consideration of the Agreement itself and to H.R. 5090. Each committee of jurisdiction is subject to automatic discharge after 45 legislative days, followed by a maximum 15 legislative days for floor action; no amendments are permitted in the implementing bill following its introduction.

Section 103. Consultation and Lay-Over Requirements for, and Effective Date of, Proclaimed Actions

Certain provisions of H.R. 5090 specifically authorize the President to implement actions by proclamation, subject to the consultation and lay-over requirements of section 103(a). Those actions may be proclaimed only if (1) the President has obtained advice on the proposed action from the appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and from the U.S. International Trade Commission (ITC); (2) the President has submitted a report to the House Committee on Ways and Means and the Senate Committee on Finance setting forth the proposed action and reasons therefor and the advice obtained; and (3) at least 60 calendar days have expired after the first two requirements are met, during which period the President has consulted with the Committees on the proposed action.

These requirements would apply to proclamation under section 201(b) of agreed modifications of the staging of duty reductions or other modifications of tariffs set forth in the Agreement, changes in the Annex Rules applied under the rules of origin (but not to

amendments in the basic rules of origin themselves, which would require implementing legislation), modifications to the tariff schedules under section 104(b) to implement provisions after the Agreement enters into force, and proclamation under section 204(b) of additional drawback eligible goods. These procedural requirements ensure that U.S. domestic interests most directly affected and the Congress are consulted and have adequate opportunity to provide their input and views before substantive changes in the application of the Agreement are implemented.

Subsection (b) requires that any other actions authorized to be proclaimed by the President by the implementing bill without being subject to the consultation/lay-over requirements not take efect before 15 days after the text of the proclamation is published in the *Federal Register*, in order to provide notice to the trading community. This authority may be used to implement technical changes, such as modifications to the tariff schedules authorized under section 104(b) prior to entry into force of the Agreement, as well as to proclaim the schedules of U.S. duty reductions and drawback eligible goods under the present Agreement as submitted to and approved by the Congress.

Section 104. Harmonized System

The Agreement utilizes the nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System (known as the "Harmonized System"). The schedules of tariff reductions, the classifications for applying the rules of origin, the special provisions on fresh fruits and vegetables, and other provisions of the Agreement are based on the Harmonized System. If that System has not been implemented in U.S. law before the Agreement enters into force, section 104 of H.R. 5090 provides that the President shall proclaim such modifications to the Tariff Schedules of the United States (TSUS) as may be necessary to give effect to the schedule of rate reductions, rules and origin, and other provisions that would, but for the absence of implementation, be proclaimed under the Harmonized System until such time as the System is implemented. H.R. 4848, the omnibus trade bill which passed the House of Representatives on July 13, 1988, contains a provision which would implement the Harmonized System. The authority under section 104 will enable the United States to implement fully its obligations under the Agreement using the present U.S. nomenclature system in the event that H.R. 4848 or similar legislation implementing the Harmonized System is not enacted this year.

Modifications to the TSUS that will take effect concurrently with entry into force of the Agreement must be published in the *Federal Register* at least 30 days before that date, and any subsequent modifications are subject to the consultation/lay-over requirements. These requirements ensure advance notice to traders of how classifications of products are affected by the Agreement. The Committee expects that the modifications and the publication would consist of a simple conversion from the Harmonized System to the TSUS nomenclature.

Section 105. Implementing Actions in Anticipation of Entry into Force

Section 105 of H.R. 5090 authorizes the President, subject to the consultation/lay-over requirements of section 103, to proclaim such actions and for U.S. Government officers to issue such regulations as may be necessary to ensure that provisions of the implementing bill or amendments made by the bill that take effect on the date the Agreements enters into force are appropriately implemented on that date. Such proclamations and regulations cannot be effective before the Agreement enters into force. Since this provision and the consultation/lay-over procedures are effective upon enactment of the bill, the President may proclaim at the same time as he issues the initial proclamation when the Agreement enters into force any changes in the Agreement agreed to with Canada prior to that date to which the authority under section 103(a) applies, such as accelerated staging of tariff reductions, if the consultation/lay-over requirements have been met before entry into force.

TITLE II. TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

Title II of H.R. 5090 provides or enacts the authorities necessary for the United States to implement and administer the preferential tariff treatment and other customs obligations under the Agreement.

Section 201. Tariff Modifications

Section 201 of H.R. 5090 contains the authority necessary for the President to reduce and eliminate U.S. rates of duty as necessary or appropriate to implement the free trade area under the Agreement with respect to imports of articles originating in Canada. At the present time imports from Canada are subject to most-favored-nation (MFN) rates of duty, except for motor vehicles and original equipment parts covered by the U.S.-Canadian Automotive Agreement implemented in 1966. The President does not have tariff proclamation authority under present law to fulfill U.S. international obligations under the Agreement to establish a free trade area with Canada.

Subsection (a) authorizes the President to proclaim such modifications or continuance of any existing U.S. duty, continuance of existing duty-free or excise treatment, or such additional duties as he determines necessary or appropriate to carry out Article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 of the Agreement, as submitted to and approved by the Congress under section 101(a) of the implementing bill. This proclamation authority includes a technical correction in the application of duties to export to Canada covered by temporary importation bonds.

Subsection (b) authorizes the President to proclaim, subject to the consultation/lay-over requirements of section 103(a), such modifications as are agreed to with Canada regarding the scheduled staging of any duty reductions in the Annexes, as well as modifications or continuance of existing duty or duty-free treatment or additional duties as he determines necessary or appropriate to maintain the

general level of reciprocal and mutually advantageous concessions with Canada provided by the Agreement. For example, this authority will allow the President to proclaim, at the time the Agreement enters into force, any modifications in the schedules of staged duty reductions approved by the Congress in the implementing bill if such modifications are agreed to with Canada and the consultation/lay-over requirements are met between date of enactment of the implementing bill and entry into force of the Agreement.

Subsection (c) places specific conditions on the implementation of duty reductions on articles referred to in Article 2008 of the Agreement in conjunction with plywood standards. The Congress encourages the President to facilitate the preparation and implementation with Canada of common performance standards for the use of softwood plywood and other structural panels for construction purposes. The President must report to Congess on the incorporation of such standards into U.S. and Canadian building codes and may implement the tariff concessions referred to in Article 2008 on softwood plywood and other specified articles when he determines that the necessary conditions have been met. Any such tariff reductions shall be in equal annual stages ending January 1, 1998, unless they commence after January 1, 1991.

Section 202. Rules of Origin

Subsection 202 of H.R. 5090 enacts the basic rules of origin set forth in Articles 301 through 304 of the Agreement and the "Interpretation" of the rules section under Annex 301.2 as statutory provisions in this implementing legislation. Any future changes to these provisions would require legislation, which could be submitted under the "fast track" procedures authorized under section 102(e) of the implementing bill during the 30-month period after the Agreement enters into force.

Subsection (d) authorizes the President to proclaim the "Rules" portion of Annex 301.2 of the Agreement, which set forth the detailed changes in tariff classification under the Harmonized System which constitute a sufficient degree of processing or assembly to meet the rules of origin. Two technical changes are made in these rules to reflect corrections since conclusion of the Agreement on January 1, 1988. The President may proclaim modifications to these technical "Rules" as may be agreed to with Canada, subject to the consultation/lay-over requirements of section 103(a).

The rules of origin are established to determine whether goods traded between the United States and Canada are eligible for preferential treatment provided under the Agreement to goods originating in the Parties. Goods produced wholly in the United States and/or Canada will qualify for preferential treatment. Goods containing materials from third countries will qualify for preferential treatment only if the materials undergo a sufficient degree of processing or assembly in one or both Parties to result in physically and commercially significant changes in the product that change its tariff classification under the Harmonized System. For some goods at least one-half of the cost of manufacturing must be attributable to U.S. or Canadian materials and/or direct costs of processing incurred in one or both Parties. Preferential treatment cannot be granted to any goods altered merely to circumvent the rules of

origin, or as a result of simple packaging or combining operations or mere dilution. Goods further processed in a third country before shipment to one of the Parties or merely transshipped from a third country also cannot qualify for preferential treatment. The Statement of Administrative Action further clarifies how the rules of origin will be applied to prevent abuses and to ensure that the benefits of preferential tariff treatment in the U.S. market accrue to goods originating in Canada, not in third countries.

These rules will be applied by the United States in determining whether goods originate in Canada for purposes of the reduction and elimination of tariffs under the Agreement, and to implement other specific provisions of the Agreement where reference is made to goods "originating in the territory of a Party," in particular the temporary tariff provisions for fresh fruits and vegetables, the Meat Import Act, and bilateral emergency relief. Under the present rule of origin, goods are considered to be a product of a particular country if they are either wholly the growth, product, or manufacture of such country of if they have been "substantially transformed" in such country. This rule will continue to apply to import and export restrictions under Article 407 of the Agreement and to global import relief measures applied to Canada authorized under Article 1102 of the Agreement.

Subsection (e) authorizes the President to proclaim modifications in the Harmonized System to the definition of Canadian articles (pertaining to administration of the Auto Pact) to conform with Chapter 3 of the Agreement, since the rules of origin under the Agreement apply to imports of all automotive products from Canada, including articles covered by the Auto Pact. The Secretary of the Treasury shall prescribe regulations to administer the value requirement under the rules of origin with respect to vehicles based on an average for vehicles of the same class or of sister vehicles, assembled in the same plant, as an alternative to calculating the value content of each vehicle.

Subsection (g) authorizes the Secretary of Commerce to issue regulations governing exports to Canada of apparel products made in either Party from fabric of third countries, in order to establish which exports of such products shall be permitted to claim preferential tariff treatment under the tariff rate quota established under the Agreement as a limited exception to the general rule of origin. Under that general rule, textile and apparel products must undergo a "double transformation" in either or both countries to be considered products of either Canada or the United States for purposes of preferential tariff treatment.

Section 203. Customs User Fees

Section 203 of H.R. 5090 amends section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to implement the obligation under Article 403 of the Agreement to phase out and exempt goods of Canadian origin from the ad valorem customs user fees charged under that Act over three years starting on January 1, 1990. At the present time, a customs user fee of 0.17 percent ad valorem is applicable to all merchandise imported into the United States to cover the costs of customs processing, with limited exceptions. The amendment also provides that any customs services on

imports exempt from the fee cannot be funded with money contained in the Customs User Fee Account. This provision was necessary in order to protect third countries from bearing an inordinate burden in funding the commercial operations of the Customs Service. It is not intended, however, to preclude the expenditure of funds derived from user fees for overtime inspectional services associated with processing passengers and cargo arriving from Canada pursuant to the recent amendment contained in the Omnibus Reconciliation Act of 1987, which authorized direct reimbursement of overtime inspectional services before being deposited into the User Fee Account.

Section 204. Drawback

Section 204 of H.R. 5090 amends sections 311, 312, 313, and 562 of the Tariff Act of 1930 (relating to bonded warehouses and drawback) to bring U.S. domestic law into compliance with the obligations under Article 404 of the Agreement to end duty drawback on exports between the United States and Canada as of January 1, 1994, with limited exceptions. U.S. duty drawback programs provide for the refund of duties paid on imported goods when such goods, or substituted domestic goods, are exported or incorporated into articles which are subsequently exported. Under certain circumstances, U.S. law also allows for the nonpayment of duties on imported articles placed into certain types of bonded manufacturing warehouses where the resulting articles are subsequently exported, and certain goods are entitled to duty-free entry under temporary importation bond.

Limited exceptions under Article 404 continue drawback for goods exported in essentially the same condition on exportation as on importation and dutiable goods originating in either Party incorporated or directly consumed in the production of goods subsequently exported to the other Party. Subsection (b) authorizes the President to proclaim those citrus and apparel products (specified in the Statement of Administrative Action) on which drawback would also be maintained. The President may also proclaim, subject to the consultation/lay-over requirements of section 103(a), the exemption agreed to with Canada of any additional goods, or a delay beyond January 1, 1994, agreed to with Canada on the drawback prohibition with respect to any goods, as provided under Article 404. All these various exceptions are defined as "drawback eligible goods" under section 204(a) of the implementing bill. In no case may drawback be paid with respect to countervailing or antidumping duties.

Subsection (c) amends section 3(a) of the Foreign Trade Zones Act to implement the obligations under Article 404 that, with the exception of "drawback eligible goods," goods withdrawn from a foreign trade zone shall be subject to duty on exportation to Canada as of January 1, 1994 (or a later date agreed to with Canada and proclaimed by the President subject to the consultation/lay-over requirements), to the same extent as if the product were destined for consumption in the United States. Under the U.S. Foreign Trade Zone program, imported goods may enter an authorized foreign trade zone for manipulation or further manufacture without the payment of duties. When the finished goods are withdrawn from

the zone for consumption in the United States, duties must be paid on the value of any foreign components at either the component or finished-good tariff rate. If the goods are exported and do not enter U.S. commerce, no duties must be paid.

Section 205. Enforcement

Section 205 of H.R. 5090 implements to the customs administration provisions under Annex 406 of the Agreement regarding certifications of origin and enforcement in order to avoid false claims of U.S. or Canadian origin for purposes of avoiding payment of duties. The Agreement authorizes the Parties to require importers to submit a declaration of origin to customs officials provided by the exporter and requires each Party to make it unlawful for an exporter to provide a false certification of origin.

Subsection (a) requires U.S. exporters who certify that goods exported to Canada meet the rule of origin requirements under the Agreement to provide, upon request, a copy of that certification to a U.S. customs official. Any person that fails to provide the copy is liable for a civil penalty of up to $10,000. Any person that certifies falsely that goods exported to Canada meet the rules of origin is subject to the same civil penalties provided under section 592 of the Tariff Act of 1930 for a violation of section 592(a) of the Act by fraud, gross negligence, or negligence, as the case may be. The procedures and provisions of section 592 applicable to violations under section 592(a) shall apply to such false certifications.

Subsection (b) amends section 508 of the Tariff Act of 1930 to require exporters to Canada to make, keep, and render for examination and inspection records pertaining to such exportations, including certifications of origin. Any person who fails to retain such records shall be subject to a civil penalty not to exceed $10,000.

Since the U.S. Customs Service has existing export enforcement authorities to conduct outbound searches and to take necessary enforcement actions with respect to suspected illegal exports, no additional statutory authority is necessary for the Customs Service to implement the export enforcement provisions of the Agreement or implementing bill.

Section 206. Exemption from Lottery Ticket Embargo

Section 206 of H.R. 5090 amends section 305(a) of the Tariff Act of 1930 to exempt, as of January 1, 1993, any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery that is printed in Canada for use in connection with U.S. lottery from the embargo imposed under that section on the importation of lottery tickets and related materials. Section 206 implements the U.S. obligation under Article 407 of the Agreement to exempt Canada from the embargo.

Section 207. Production-Based Duty Remission Programs with Respect to Automotive Products

Article 1002(3) of the Agreement prohibits Canada from granting production-based duty waivers to any companies other than those specifically listed in Part Three of Annex 1002.1. Those waivers must terminate not later than January 1, 1996, or on such earlier

date specified in existing agreements between Canada and the waiver recipient.

Section 207 of H.R. 5090 responds to Member concerns that the Canadian production-based duty remission programs on automotive products strictly comply with Canada's obligations under the Agreement and the GATT and that U.S. rights are enforced if the programs are inconsistent with those obligations. Subsection (a) requires the USTR to undertake a study to determine whether any production-based duty remission programs of Canada with respect to automotive products are either (1) inconsistent with the provisions of, or otherwise deny benefits to the United States under, the GATT, or (2) being implementing inconsistently with the obligations under Article 1002 not to expand the extent, application, or duration of such programs. The USTR must also determine whether to initiate an investigation under section 301 of the Trade Act of 1974 with respect to any such programs.

Subsection (b) requires the USTR to submit a report to the Congress no later than June 30, 1989 (or by September 30, 1989, if an extension is necessary) containing (1) the results of the study, as well as a description of the basis used for measuring and verifying compliance with the obligations, and (2) any determination made on initiation of a section 301 investigation and the reasons therefor. The USTR shall also continue to monitor the degree of Canadian compliance with the obligations under Article 1002.

TITLE III. APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

Title III of H.R. 5090 contains amendments to various U.S. laws necessary to implement obligations under the Agreement pertaining to trade in specific sectors, implements provisions in the Agreement authorizing import safeguard measures, and provides authorities and objectives for further bilateral negotiations to expand the scope and benefits of the Agreement in specific areas. Sections 301 (d), (e), and (f) (pertaining to importation of animal vaccines and seeds, and plant and animal health regulations), 305 (energy), 307 (temporary entry of business persons), and 308 (amendment to section 5136 of the revised statutes) are not within the jurisdiction of the Committee on Ways and Means.

Section 301. Agriculture

Section 301 of H.R. 5090 makes necessary or appropriate changes in U.S. laws to implement provisions of the Agreement concerning bilateral trade in certain agricultural products.

1. *Temporary duties on fresh fruits and vegetables.*—Section 301(A) of the implementing bill incorporates in U.S. law the provisions of Article 702 of the Agreement establishing the right under certain conditions for either Party during the twenty-year period after the Agreement enters into force to impose a temporary duty on imports of fresh fruits and vegetables.

Subsection (a) authorizes the Secretary of Agriculture to recommend to the President the imposition of a temporary duty on imports of any Canadian fresh fruit or vegetable (defined under paragraph (6)), if the Secretary determines that (1) for each of 5 consecutive working days the import price of the Canadian fresh fruit or

vegetable is below 90 percent of the corresponding 5-year average monthly import price, and (2) the planted acreage in the United States for the like fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. The Secretary will publish notice of a determination that the two conditions exist in the *Federal Register.* In determining whether to recommend to the President imposition of a temporary duty, the Secretary shall consider whether these two conditions have led to a distortion in U.S.-Canada trade of the fruit or vegetable and, if so, whether imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

Within 7 days of receiving the Secretary's recommendation, the President shall determine whether to impose a temporary duty after taking into account the national economic interests of the United States and, if so, shall proclaim the temporary duty on the Canadian fresh fruit or vegetable concerned. Any temporary duty, together with any other duty in effect, shall not exceed the lesser of: (1) the column one (MFN) duty in effect prior to January 1, 1989, for the applicable season, or (2) the column one duty in effect at the time the temporary duty is applied. No temporary duty shall apply to shipments in transit on the first day that the duty is effective.

Any temporary duty shall cease to apply to articles entered on or after the earlier of (1) the day following 5 consecutive working days in which the Secretary determines that the Canadian point of shipment price exceeds 90 percent of the corresponding 5-year average monthly import price; or (2) 180 days after the temporary duty first took effect. No temporary duty may be applied during the same time as any import relief under the Trade Act of 1974 is in effect with respect to such fruit or vegetable.

The Secretary of Agriculture may issue regulations to implement these provisions. The Commissioner of Customs and the Director of the Bureau of the Census shall cooperate in providing the Secretary timely information and import data to administer the provision. This authority to impose temporary duties expires twenty years after the Agreement enters into force.

2. *Meat Import Act of 1979.*—Section 301(b) of the implementing bill amends the Meat Import Act of 1979 to implement the obligation under Article 704 of the Agreement prohibiting either Party from imposing import restrictions on meat imports from the other Party except in specified circumstances.

The Meat Import Act of 1979 requires the imposition of quotas on imports of beef, veal, mutton, and goat meat at a level fixed by a statutory formula (statutory base of 1,204,600,000 pounds adjusted by a countercyclical formula) when the aggregate quantity of such imports on an annual basis is expected to exceed 110 percent of that adjusted base quantity level. However, quotas cannot be below 1,250,000,000 pounds. The President may suspend or raise quotas based on overriding national economic or security interests, inadequate domestic supplies at reasonable prices, or trade agreements implementing the policy. It has been U.S. practice to negotiate voluntary restraint agreements with one or more supplying countries if necessary to avoid triggering unilateral quotas.

Section 301(b) amends the Meat Import Act of 1979 to delete Canadian meat from the formula calculation and to adjust the minimum quota level accordingly. Meat articles originating in Canada (as determined by the Agreement rules of origin enacted under section 202) would be exempt from any import limitations imposed under the Meat Import Act, except that the President is authorized by proclamation to limit Canadian meat articles to the extent and for such period of time as he determines is sufficient to prevent frustration of any import limitations imposed on imports from third countries under the Meat Import Act or by agreements negotiated under section 204 of the Agricultural Act of 1956, if he determines that Canada has not taken equivalent action.

3. *Agricultural Adjustment Act.*—Section 301(c) of H.R. 5090 implements obligations under Articles 705 and 707 of the Agreement relating to import restrictions on grain and grain products and sugar-containing products. Under Article 705.5, the United States and Canada reserved their rights to impose quantitative restrictions or import fees on imports of specified grains or grain products when imports of the particular grain increase significantly as a result of a substantial change in the U.S. or Canadian support programs for that grain. Article 707 prohibits the United States from imposing import quotas or fees on Canadian products containing 10 percent or less sugar by dry weight for the purpose of restricting the sugar content of such products.

Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions on any article as he determines necessary so that imports of the article will not render or tend to render ineffective, or materially interfere with, an agricultural support program. Subsection (c) amends section 22(f) of the Agricultural Adjustment Act to authorize the President, pursuant to Articles 705.5 and 707 of the Agreement, to exempt products of Canada from import restrictions imposed under that section. No change in current practice is contemplated with respect to sugar-containing products since import quotas currently in effect on such products already exclude products containing 10 percent or less sugar by dry weight.

The Statement of Administrative Action clarifies several points in Article 705 of the Agreement regarding market access of grain and grain products. The Committee notes its concurrence with the Administration's clarification of these points in the Statement.

With respect to quantitative import limitations on grains, such as those possible under section 22 of the Agricultural Adjustment Act of 1933, as amended, the Agreement allows such import restraints to be introduced or reintroduced when imports of the particular grain increase significantly as a result of a substantial change in the support programs for that grain of either the United States or Canada.

The Statement interprets the term "substantial change," making clear that a change may be substantial without entailing a thorough revamping of all support programs; the fundamental direction of policy, or the fundamental nature of a program, need not change dramatically in order for a change to be "substantial." The Statement further cites two examples of changes that would be "substantial," and the Committee notes its agreement with these

examples, noting at the same time that they are but two of many which could be cited. The Statement also clarifies that a "substantial change" might be one that occurred before the Agreement entered into force.

The Statement also makes it clear that a "significant increase" does not require that import penetration attain any particular level, either in absolute numbers or as a portion of the total U.S. market. A small increase of such imports in absolute terms might well be "significant" since historic grain imports from Canada are quite low. The Statement notes that other factors besides the requisite "substantial change" might well contribute to the significant increase in imports; the substantial change need not be the sole cause of increasing imports. It is also not necessary for the substantial change to be the largest single cause of the import growth.

In connection with pledges by both the United States and Canada that neither they nor entities they create, like the Canadian Wheat Board (CWB), will export grains at less than the "acquisition price," the Statement also makes a useful point: The Canadian system under which an initial payment is made to farmers for their wheat, with later payments possible depending on various circumstances, could be subject to manipulation by the CWB. The Statement notes that the United States will review the CWB's actions to insure that the intent of the Agreement's provisions on "acquisition price" are not being circumvented. The Committee notes that such a circumvention would occur if the CWB manipulated initial payment rates downward for the purpose of reducing its apparent acquisition price so as to increase sales to the U.S. market, later making up the difference in subsequent payments.

The Committee also notes the following exchange of letters between the Chairman and the U.S. Trade Representative with respect to the GATT legality of the CWB's import licensing system, with agreement that trade actions against the licensing system could be held in abeyance unless the CWB fails to exercise good faith:

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 27, 1988.

Hon. CLAYTON YEUTTER,
U.S. Trade Representative,
Washington, DC.

DEAR MR. AMBASSADOR: The Committee would like to confirm its understanding of the Administration's position, in the context of the United States-Canada Free Trade Agreement (FTA), with respect to Canada's import permit requirements for wheat and products.

In connection with Article 705.5 of the FTA, the Committee would note that in the short term U.S. producers of wheat and wheat products are unlikely to gain significant access to the Canadian market since Canada's import permit requirements for wheat and wheat products will likely remain in place. Questions have been raised as to whether the permit system for wheat and wheat products is consistent with Canada's obligations under the General Agreement on Tariffs and Trade (GATT), since it is not clear that

the permit system satisfies any of the GATT conditions permitting quantitative import restrictions.

Given the spirit of cooperation between our two countries, however, the Committee feels the interests of both countries are better served through a cooperative, mutually beneficial approach. Since the Canadian Wheat Board (CWB) will have a significant measure of control over the volume of wheat shipped into the United States, including wheat benefiting from transportation subsidies, one indication of such an approach by the CWB would be the volume of shipments to the United States in future years relative to recent years and the continuation of its current restrictive policy regarding the granting of export licenses to producers. The Committee would expect that consideration of actions against Canada's import permit requirements for wheat and wheat products, such as a challenge under the GATT, would therefore be held in abeyance unless there is evidence of a lack of such a cooperative approach on the part of the CWB.

Sincerely yours,

DAN ROSTENKOWSKI,
Chairman.

THE U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, DC, August 1, 1988.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In response to your letter of July 27, this is to confirm the Committee's understanding of the Administration's position, in the context of the United States-Canada Free-Trade Agreement (FTA), with respect to Canada's import permit requirements for wheat and wheat products.

In connection with Article 705.5 of the FTA, the Committee noted that in the short term, U.S. producers of wheat and wheat products are unlikely to gain significant access to the Canadian market since Canada's import permit requirements for wheat and wheat products will likely remain in place. Questions have been raised as to whether the permit system for wheat and wheat products is consistent with Canada's obligations under the General Agreement on Tariffs and Trade (GATT), since it is not clear that the permit system satisfies any of the GATT conditions permitting quantitative import restrictions.

Given the spirit of cooperation between our two countries, however, the Administration agrees with the Committee that the interests of both countries are better served through a cooperative, mutually beneficial approach. Since the Canadian Wheat Board (CWB) will have a significant measure of control over the volume of wheat shipped into the U.S., including wheat benefiting from transportation subsidies, one indication of such an approach by the CWB could be the volume of shipments to the U.S. in future years relative to recent years and the continuation of its current restrictive policy regarding the granting of export licenses to producers. The Administration intends that consideration of actions against Canada's import permit requirements for wheat and wheat products,

such as a challenge under the GATT, would therefore be held in abeyance unless there is evidence of a lack of such a cooperative approach on the part of the CWB.

Sincerely,

CLAYTON YEUTTER.

In connection with implementing the provisions of paragraphs 1 and 2 of Article 705, the Committee emphasizes its understanding that the requirements that Canada may impose on grain originating in the territory of the United States shall not be used to restrict in any way the export of United States grain to Canada. The Committee interprets paragraph 2 of Article 705 literally to mean that the Canadian Grain Commission shall in no way delay or hinder the provision of any end-use certificate.

The Committee also believes that the Administration should pursue immediate consultations with Canada regarding the sale on consignment of grains originating in the territory of the United States. An arrangement should be reached with Canada which would allow U.S. grains to be purchased by a Canadian elevator or broker for subsequent sale to an end-user in Canada.

Section 302. Relief from Imports

Section 302 of H.R. 5090 implements in domestic law the two-track system under Articles 1101 and 1102 of the Agreement for imposing emergency import relief measures either on a bilateral basis only or on imports from Canada under global relief actions.

1. *Bilateral relief.*—Section 302(a) of the implementing bill establishes a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis as permitted under Article 1101. A representative of a domestic industry (a trade association, firm, union, or group of workers) may file a petition requesting bilateral action with the ITC. The ITC shall promptly initiate an investigation and determine within 120 days whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an article originating in Canada (based on the Agreement rules of origin enacted under section 202) is being imported in such increased absolute quantities and under such conditions that imports of that Canada article *alone* constitute a substantial cause of serious injury to the domestic industry producing a like or directly competitive article.

Because of the limited scope of the investigation and available relief, only certain specified provisions applicable to normal import relief investigations by the ITC under section 201 of the Trade Act of 1974 as in effect on June 1, 1988, would apply to ITC investigations for bilateral relief. The applicable provisions would include consideration of all relevant economic factors, including those enumerated under paragraph (2) of section 201(b), except for factors to determine threat of serious injury; the criteria for determining the domestic industry, including a regional industry, under paragraph (3); the definition of "substantial cause" under paragraph (4); notification of appropriate agencies under paragraph (6) of possible unfair trade practices discovered during the course of an investigation; and interpretation of the term "significant idling of produc-

tive facilities" under paragraph (7) of section 201(b); and the public hearing requirement under section 201(c).

If the ITC makes an affirmative injury determination (or is equally divided), the Commission shall find and recommend to the President the amount of import relief necessary to remedy the injury, limited to the relief available under this provision. Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) a report on the determination and its basis and any remedy finding, including any dissenting or separate views and a transcript of the hearings and any briefs submitted. A summary of the report will be published in the *Federal Register*.

Within 30 days after receiving the ITC report of an affirmative determination, the President shall provide relief from imports of the article originating in Canada to the extent and for such time, not to exceed 3 years, as he determines necessary to remedy the injury. The President is not required to provide import relief, if he determines relief would not be in the national economic interest. The import relief is limited to (1) suspension of any further duty reductions under the Agreement on the article; (2) an increase in the duty on the article originating in Canada to the lesser of the MFN duty imposed on the article from any other foreign country either at the time the relief is provided or on the day before the Agreement enters into force (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article originating in Canada, an increase in that duty not to exceed the MFN duty imposed on the article originating in Canada for the corresponding season immediately prior to the entry into force of the Agreement. Since bilateral import relief action may only be taken once on a particular article during the 10-year transition period, no investigation may be initiated once import relief is provided on that article. Any import relief action under section 302(a) would be treated as an import relief action under chapter 1 of title II of the Trade Act of 1974 for purposes of the compensation authority under section 123 of that Act.

2. *Global relief.*—Section 302(b) of the implementing bill establishes the criteria and procedures for implementing the obligations under Article 1102 of the Agreement with respect to the application of global import relief measures to imports from Canada. If in a standard import relief investigation under chapter 1 of title II of the Trade Act of 1974 the ITC makes an affirmative determination (or is equally divided) that increased imports are a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission must also find and report to the President whether imports from Canada of the article are "substantial" and are "contributing importantly" to the injury or threat thereof. The Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of the article to be "substantial." The term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

In determining whether to apply safeguard action to imports from Canada, the President shall determine whether imports of the article from Canada are substantial and contributing importantly

to the serious injury or threat thereof found by the ITC, and shall exclude imports from Canada from the safeguard action if his determination is negative. If the President excludes imports from Canada from the relief action and subsequently determines that a "surge" in such imports undermines the effectiveness of the import relief, he may take appropriate action to include imports from Canada. The term "surge" means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

Any entity (including a trade association, firm, certified or recognized union, or group of workers) that is representative of an industry for which import relief action is taken that excludes imports from Canada may request the Commission to conduct an investigation of imports from Canada of the article. The Commission shall conduct an investigation to determine whether a surge of imports from Canada of the article undermine the effectiveness of the import relief action. The Commission must report its findings to the President within 30 days of the request.

An entity representing a domestic industry may submit a petition for bilateral relief under section 302(a) or for standard import relief under chapter 1 of title II of the Trade Act of 1974, or for both types of relief at the same time. If petitions are submitted by the industry for both bilateral and global relief at the same time, the Commission will consider the petitions jointly in order to avoid duplicative investigations to the extent possible.

Import relief, aside from orderly marketing agreements, is generally provided under present law on a global, MFN basis, although the President may take action without regard to nondiscriminatory application after considering the international obligations of the United States. Provisions for separate consideration of imports from Canada in the application of global relief measures under a free trade area is consistent with similar treatment afforded Israel under the United States-Israel Free Trade Area Implementation Act of 1985.

Section 303. Acts Identified in National Trade Estimates

Section 181 of the Trade Act of 1974 requires the U.S. Trade Representative to submit an annual report to the Congress identifying and analyzing the impact of significant foreign trade barriers on U.S. commerce, and describing any action taken (or reasons for no action) to eliminate them. Section 303 of H.R. 5090 clarifies that this reporting requirement and accountability for actions against identified barriers continue to apply to Canada under the Free Trade Agreement. Information supplied on actions taken against Canadian foreign trade barriers indentified in the report shall include action under section 301 or section 307 of the Trade Act of 1974, including resolution through appropriate dispute settlement procedures, and bilateral or multilateral negotiations or consultations.

Section 304. Negotiations Regarding Certain Sectors; Biennial Reports

The United States-Canada Free-Trade Agreement achieves significant liberalization of bilateral trade and economic barriers, and

represents probably the maximum results overall that could be negotiated at the present time. However, a recurrent theme in the consideration of the Agreement by the Committee on Ways and Means was the view expressed by a number of Members that further liberalization should be negotiated in a number of economic sectors. Many representatives of the private sector also testified before the Subcommittee on Trade or submitted written comments that the Agreement did not achieve sufficient results in certain areas (e.g., agricultural restrictions) or did not address disciplines on certain practices at all (e.g., subsidies) that should be the subject of further negotiations to expand and strengthen the benefits of the Agreement. In sum, while the Agreement meets the legal requirements of a free trade area under GATT Article XXIV, many barriers and distortions remain to be eliminated before bilateral free trade is achieved in an economic sense.

Section 304 of H.R. 5090 sets forth a mandate for further negotiations between the United States and Canada in certain sectors. Subsection (a) authorizes the President to enter into negotiations with Canada to conclude one or more agreements (including an amendment to the present Agreement) to (1) liberalize trade in services in accordance with Article 1405 of the Agreement, (2) liberalize investment rules, (3) improve intellectual property right protection, (4) increase the value requirement for determining whether an automotive product is treated as originating in Canada or the United States, and (5) liberalize government procurement practices, particularly with regard to telecommunications. In addition, subsection (a) provides that the President will enter immediate consultations with the Government of Canada to obtain the exclusion from the transport rates established under Canada's Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via East Coast ports for consumption in the United States.

The negotiating mandate and objectives set forth in this section should not be regarded as all inclusive of the areas in which the Committee believes further bilateral trade liberalization should be achieved. The Committee also expects negotiations to proceed, on a bilateral or multilateral basis, to expand the benefits of the Agreement by reducing other trade barriers, such as import quotas and other restrictions on agricultural trade as a high priority, application of the Agreement to cultural industries, and greater disciplines on the use of subsidy practices.

1. *Services, investment, intellectual property rights.*—Section 304(b) of the implementing bill sets forth objectives for the United States in negotiations in three areas, namely services, investment, and intellectual property rights. Each set of objectives is similar to, or consistent with, U.S. objectives for the Uruguay Round of GATT multilateral trade negotiations, as well as compatible with obligations under the present Agreement.

U.S. negotiating objectives to liberalize trade in *services* include (1) with respect to developing services sectors not covered by the Agreement, the elimination of tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade; (2) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provi-

sion of services; (3) the elimination of local presence requirements; and (4) the liberalization of government procurement of services. In conducting these negotiations, the President shall consult with the services private sector advisory committees established under section 135 of the Trade Act of 1974.

U.S. negotiating objectives to liberalize *investment* rules include (1) the elimination of direct investment screening; (2) the extension of the principles of the Agreement to energy and cultural industries, to the extent these industries are not currently covered by the Agreement; (3) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and (4) making all investment disputes subject to dispute resolution under chapter 18 of the Agreement. The President, in conducting these negotiations, shall consult with representatives of diverse U.S. interests in investment.

U.S. objectives in negotiations to improve the protection of *intellectual property rights* include (1) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and (2) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards. The President, in conducting these negotiations, shall consult with persons representing diverse interests in the United States in intellectual property.

2. *Automotive products.*—The rules of origin under the Agreement and enacted under section 202 of the implementing bill with respect to automotive products require U.S. and Canadian content of an automotive product of at least 50 percent in order to qualify for preferential tariff treatment under the Agreement. All automotive products imported into the United States from Canada must satisfy this value requirement under the Agreement to qualify for duty-free treatment, regardless of whether the product qualifies at present for duty-free treatment under the Auto Pact. The 50 percent value requirement under the Agreement is the minimum percentage of the value of an automotive product that must be accounted for by the value of the materials in the product that originated in the United States and/or Canada plus the direct cost of processing or assembly performed in the United States and/or Canada with respect to that product. This is a more stringent standard than the rule of origin the United States applies currently to determine automotive products of Canadian origin under the Auto Pact in which 50 percent of the invoice price (based upon overhead and other indirect costs in addition to direct costs of production) must be incurred in the United States or Canada.

Section 304(c) of the implementing bill sets forth U.S. negotiating objectives regarding automotive products. The President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement for automotive products from 50 percent to at least 60 percent. The President is authorized through January 1, 1999, to proclaim any agreed increase in the value requirement for automotive products under the Agreement rules of origin.

Certain representatives of the U.S. automotive parts industry and a number of Members of Congress have urged that the minimum 50 percent value requirement under the present Agreement,

while an improvement over the current Auto Pact rules, should be made higher to ensure more North American, as opposed to third country, sourcing of automotive parts to qualify for duty-free preferential treatment. A 60 percent North American content requirement was a high U.S. priority at the conclusion of the negotiations, but the Canadian government was not willing to increase the rule of origin from 50 to 60 percent at that time except on terms unacceptable to the U.S. automotive industry. The Committee understands that the Administration is committed to pursuing the matter further as a high priority to seek Canadian agreement to increase the rule of origin for automotive products from 50 percent to 60 percent as early as possible.

3. *Procurement.*—Section 304(a) of the implementing bill authorizes negotiations to liberalize government procurement practices, particularly on telecommunications. With regard to these negotiations, particularly on telecommunications, the objective should be to liberalize procurement practices not only of the Government of Canada, but of entities controlled and, if appropriate, regulated by the Government, for the purpose of obtaining open market access for U.S. suppliers, including assurance from Canada that Canadian telephone operating companies would provide nondiscriminatory access by U.S. manufacturers to their procurement market. The objective is not intended to cover truly private firms which compete with government controlled or regulated entities.

4. *Crow's Nest subsidies.*—Section 304(a) of the implementing bill also provides that the President will enter into immediate consultations with the Government of Canada to obtain an end to Canada's use of transportation subsidies on grain moving through eastern Canadian ports to the United States. The Committee expects that these negotiations will proceed expeditiously. The Committee understands that the operation of the so-called "Crow's Nest" rail transport subsidy through Thunder Bay, the primary concern of this provision, can be quite significant.

5. *Potatoes.*—Section 304(d) of the implementing bill authorizes the President, during the five-year period after date of enactment of the Act, to enter into negotiations with Canada to obtain agreement to limit the exportation and importation of all potatoes between the United States and Canada. Any agreement shall provide for an annual limitation divided equally into each half of the year. The Secretary of Agriculture and the U.S. Trade Representative shall consult with representatives of the potato-producing industry to solicit the views on negotiations with Canada for reciprocal quantitative limits on potato trade.

Subsection (d) also authorizes the President to direct the Secretary of the Treasury to carry out actions as may be necessary or appropriate to ensure attainment of the objectives of any such agreement entered into on potato trade and enforce any quantitative limitation, restriction, and other terms contained in the agreement, such as requirements for presentation of valid export licenses or other documentation as a condition for entry into the United States of any article subject to the agreement.

6. *Canadian fish.*—Article 1203(c) of the Agreement exempts from Agreement obligations certain specified statutes of the eastern Canadian provinces that would allow these provinces to control

the export of unprocessed fish. If Canada does apply export controls on unprocessed fish under these exempted statutes, or if Canada should apply landing requirements for fish caught in Canadian waters as a condition for exportation, then section 304(e) of the implementing bill requires the President to take appropriate action within 30 days to enforce U.S. rights under the GATT that are specifically retained under Article 1205 of the Agreement. In enforcing U.S. rights, the President has discretion to (1) challenge the offending Canadian practices before the GATT; (2) retaliate against such offending practices; (3) seek resolution directly with Canada; (4) refer the matter for dispute resolution to the Canada-United States Trade Commission; or (5) take other action the President considers appropriate.

The United States successfully challenged under GATT dispute settlement proceedings Canadian export controls on certain unprocessed fish applied on the west coast of Canada. Subsection (e) ensures that the United States would, in fact, take appropriate action to redress the commercial impact and enforce its GATT rights if eastern Canadian provinces apply similar export controls or if Canada chose to substitute a landing requirement on unprocessed fish that contravenes GATT rules.

7. *Biennial report.*—Section 304(f) of the implementing bill requires the President to submit to Congress every two years after the Agreement enters into force a report regarding (1) the status of negotiations regarding agreements authorized under section 304; (2) the effectiveness and operation of any agreement entered into under section 304 that is in force; (3) the effectiveness of operation of the present Agreement generally; and (4) the actions taken by the United States and Canada to implement further the objectives of the Agreement. The purposes of this reporting requirement are to emphasize the importance of obtaining the objectives set forth in section 304 and to achieve accountability to the Congress on the progress in negotiations, as well as to provide information on the actual experience in the operation and effectiveness of the present Agreement.

Section 306. Lowered Threshold for Government Procurement Under Trade Agreements Act of 1979 in the Case of Certain Canadian Products

Title III of the Trade Agreements Act of 1979 authorizes the President to waive Buy American Act and other restrictions on a reciprocal basis on government procurement purchases by designated Federal agencies of eligible products covered by the GATT Agreement on Government Procurement from other Code signatories, including Canada. The Code and waiver authority do not apply to purchase contracts valued below the threshold of 130,000 Special Drawing Rights (about $156,000 in 1988). Chapter 13 of the Agreement lowers that threshold on a bilateral basis to $25,000 for otherwise Code-covered purchases.

Section 306 of H.R. 5090 implements the lower government procurement threshold under the Agreement into U.S. law by amending section 308(4) of the Trade Agreements Act of 1979 to define the term "eligible product" for purposes of the President's authority under section 301 of that Act to include a product or service of

Canada having a contract value of $25,000 or more that would otherwise be covered for U.S. procurement under the GATT Agreement, except as otherwise agreed by the United States and Canada with respect to future coverage of that Code.

A similar amendment under the U.S.-Israel Free Trade Agreement implementing legislation lowered the threshold to $50,000 on bilateral procurement with Israel covered by the Code. As under the agreement with Israel, the waiver authority provided for government purchases from Canada is strictly limited to products and entitles covered by the GATT Agreement. The authority will liberalize procurement opportunities for Code-covered purchases on a reciprocal basis, but cannot be used to waive Buy American restrictions that continue to apply to goods or services on purchases by entities not covered by the GATT Agreement.

Section 309. Steel Products

Section 309 of H.R. 5090 makes clear that nothing in the implementing legislation shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada. This provision simply clarifies that a steel voluntary restraint agreement could be reached with Canada without violating the terms of the bilateral Agreement. It inclusion, however, is not an indication that the Committee is recommending the negotiation of such a restraint agreement.

TITLE IV. BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

Title IV of H.R. 5090 makes the necessary or appropriate changes in U.S. domestic law to implement major provisions of the Agreement under chapter 19 that establish procedures for selection of, and review by, binational panels and extraordinary challenge committees of final antidumping (AD) and countervailing duty (CVD) determinations under national laws that apply to goods from either Party. Title IV also authorizes a U.S. Secretariat as provided under chapter 18 of the Agreement.

Under the U.S. AD and CVD laws (Title VIII of the Tariff Act of 1930), the administering authority (currently the International Trade Administration of the Department of Commerce) determines whether imports are being sold in the United States at less than fair value or are being subsidized by a foreign government, respectively, and the ITC determines whether such imports cause or threaten material injury to the U.S. domestic industry. The amount of dumping or subsidy is offset by imposing an antidumping or countervailing duty on imports of the particular merchandise.

Binational panel review of final AD or CVD determinations regarding U.S. or Canadian merchandise will substitute for judicial review in the national courts, unless both governments and the private parties involved do not request a panel. The five-person panels will apply only the national law and standards of judicial review of the country whose determination is under review to

decide whether national law was applied correctly. Decisions of the panels will be binding on the two countries, but will not affect judicial review by national courts concerning imports from third countries. In certain exceptional circumstances a panel decision may be appealed to a three-person binational extraordinary challenge committee.

Binding decisions by binational panels as a substitute for judicial review of unfair trade practice determinations by national courts represents an entirely new and as yet untested system and a significant departure for resolving differences in international trade. This system was agreed to in a particular negotiating context by two highly developed major trading partners with substantial bilateral trade, similar unfair trade practice laws, long histories of administering these statutes, and similar legal traditions. Approval and implementation by the Congress of this new system in the context of this particular Agreement should not, therefore, be viewed as creating a precedent for applying any similar system in bilateral or multilateral trade agreements with other countries. The Committee believes there should be substantial experience gained under the Agreement before any possible consideration is given to proposing or agreeing to any similar mechanism with any other country in the future.

Section 401. Amendments to Section 516A of the Tariff Act of 1930

Section 401 of H.R. 5090 amends section 516A of the Tariff Act of 1930 to incorporate obligations on Canadian merchandise and to make related necessary changes in U.S. laws.

Section 516A of the Tariff Act of 1930, as amended, provides for judicial review of final determinations under the AD and CVD laws having final effect. Review is by the U.S. Court of International Trade (CIT), with a right of appeal in the U.S. Court of Appeals for the Federal Circuit and by certiorari to the U.S. Supreme Court. Within 30 days of publication of any applicable final determination, an interested party who is a party to the proceeding may commence an action in the CIT by filing a summons and complaint, with the content and the form, manner, and style prescribed by the rules of the court, contesting any factual findings or legal conclusions on which the determination is based.

1. *Binational panel review.*—Section 401(c) of the implementing bill adds a new subsection (g) to section 516A to provide binational panel review of final AD and CVD determinations in which the class or kind of merchandise is Canadian. The determination of "class of kind" would be made by the administering authority. New subsection (g) provides that final AD and CVD determinations made in connection with a proceeding regarding a class or kind of Canadian merchandise shall not be reviewable under section 516A, and no U.S. court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise. Determinations subject to exclusive binational panel review are defined in paragraph (1) of new section 516A(g) as (1) final AD or CVF determinations by the ITC under section 705 or 735 of the Tariff Act of 1930; (2) administrative review determinations by the administering authority or the ITC under section 751 of the Tariff Act of 1930; and (3) determinations

by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing AD finding or AD or CVD order.

There are three exceptions specified under paragraph (3) of new section 516A(g) to the general rule of binational panel review. Determinations continue to be subject to judicial review under section 516A(a) if:

(1) Neither the United States nor Canada requested review of the particular determination by a binational panel. To afford affected parties sufficient time to choose forums, determination is reviewable under section 516A(a) only if the party seeking review has provided timely notice of its intent (i.e., delivered no later than 20 days after publication of the determination in the *Federal Register,* or receipt of a class or kind ruling by the Government of Canada) to the U.S. and Canadian Secretaries of the Secretariat, all interested parties to the proceeding, and the administering authority or the ITC, as appropriate.

(2) The particular AD or CVD determination is a revised determination issued as a direct result of judicial review, and neither the United States nor Canada requested binational panel review of the original determination.

(3) The particular AD or CVD determination is issued as a direct result of judicial review under section 516A(a) commenced prior to entry into force of the Agreement.

In addition, paragraph (4) of new section 516A(g) establishes a two-track procedure for judicial review of any challenge to the constitutionality of this legislation implementing the binational panel review system, or of any constitutional issues arising out of an AD or CVD determination. Subparagraph (A) provides for expeditious review of any challenge to the constitutionality of the binational panel system. An action for declaratory judgment and/or injunctive relief regarding a determination on the grounds that the legislation implementing the binational panel system under chapter 19 of the Agreement violates the Constitution may be brought in the U.S. Court of Appeals for the District of Columbia Circuit, to be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code. As provided in subparagraph (H), any final judgment of the Court of Appeals shall be reviewable by appeal filed within 10 days directly to the U.S. Supreme Court. Subparagraph (B) provides for judicial review under section 516A(a) by a three-judge panel of the CIT limited solely to resolving an issue of the constitutionality of a U.S. law as enacted or applied arising out of the underlying AD or CVD proceeding (other than an issue to which subparagraph (A) applies).

The structure provided under subparagraph (A) is modeled on the appellate mechanism Congress used to review the constitutionality of the Gramm-Rudman-Hollings Act and the Federal Election Commission authorization. The expedited process ensures that if there is any challenge to the constitutionality of the binational panel review system, any resulting uncertainty about implementation of these provisions of the Agreement will be resolved quickly.

A number of procedural safeguards are included to prevent frivolous or unwarranted challenges to the binational review system. As

provided under subparagraph (C), a constitutional challenge may be commenced under subparagraph (A) or (B) only within the 30-day period following publication of notice in the *Federal Register* of the completion of binational panel review of the particular AD or CVD determination. Subparagraph (D) provides for the transfer by a court of an action filed under subparagraph (A) or (B) if that court finds that the action should have been filed in the other court. As provided in subparagraph (E), frivolous claims brought under subsection (A) or (B) are subject to dismissal and sanctions as provided under existing law (section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure). Subparagraph (F) applies the security requirements of Rule 65(c) of the Federal Rules of Civil Procedure to actions commenced under subparagraph (A), and requires the party seeking review under subparagraph (B) to post sufficient bond to recompense parties affected for any loss, expense, or damage caused by improvident or erroneous issuance of a temporary restraining order or an injunction. If the court upholds the constitutionality of the determination in an action under subparagraph (B), the court shall award to a prevailing party fees and expenses, as well as any costs, unless the court finds the position of the plaintiff was substantially justified or special circumstances make an award unjust. Finally, subparagraph (G) provides that the record of proceedings before the binational panel shall not be considered part of the record for review by the court of constitutional challenges under subparagraph (A) or (B). The court's review would be limited to resolution of the constitutional challenge, not judicial review of the binational panel's decision (permitted under Article 1904 of the Agreement only by an extraordinary challenge committee). This limitation on the record before the Federal courts is also designed to avoid constitutional challenges from becoming a means to obtain judicial review of nonconstitutional issues.

2. *Liquidation of entries.*—Under section 516A(c) of present law, duties are assessed and entries of merchandise are liquidated (i.e., final duties or drawback on an entry computed or ascertained) in accordance with the agency's AD or CVD determination until there is a final court decision overturning that determination. That is, relief obtained from judicial review of a determination is generally prospective. However, the court may enjoin the liquidation of some or all entries covered by certain types of challenged determinations upon request by an interested party for such relief and a proper showing that the relief should be granted under the circumstances. Present law also requires entries to be liquidated within certain time limits.

Paragraph (5) of new section 516A(g) amends present law to implement the obligation under Article 1904(15)(d) of the Agreement to ensure that procedures under domestic law concerning the refund, with interest, of duties operate to give effect to final binational panel decisions. In the absence of the amendment, the administering authority might be compelled to order liquidation of entries before completion of binational panel review. Subparagraph (B) establishes the general rule, comparable to section 516A(c)(1) of present law, that entries of Canadian merchandise covered by an AD or CVD determination for which binational panel review is requested shall be liquidated in accordance with the agency determi-

nation if they are entered, or withdrawn from warehouse, for consumption on or before notice is published in the *Federal Register* of a final decision of a binational panel or extraordinary challenge committee which is not in harmony with the challenged determination.

An exception under subparagraph (C) to this general rule, however, provides that, upon request of an interested party that was a party to the underlying proceeding and is a participant in the binational panel review, the administering authority shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending final disposition of the review. This exception applies only if the binational panel is reviewing a determination by the administering authority made during the assessment stage of an AD or CVD proceeding. If the interested party making the request is a foreign manufacturer, producer, or exporter, or a U.S. importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that party making the request. If the request is by a U.S. domestic interested party, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel. In other words, an interested party cannot obtain relief through continued suspension of liquidation on entries of another party or with respect to which it is not challenging the determination. Any action by the administering authority or the U.S. Customs Service concerning continued suspension of liquidation shall not be subject to judicial review.

Injunctive relief under section 516A(c)(2) of present law would not apply to determinations for which binational panel review is requested, except for cases involving constitutional issues raised under paragraph (4)(B) of new section 517A(g). The CIT will continue to have the power to issue injunctions as necessary in these cases.

3. *Implementation of panel and committee decisions.*—Paragraph (7) of new section 516A(g) provides for the implemenation under U.S. domestic procedures of decisions by a binational panel or extraordinary challenge committee remanding a determination by the administering authority or the ITC. Under subparagraph (A), if a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the ITC, the administering authority or the ITC shall, within the period specified by the panel or committee, take action not inconsistent with the decision. Any action by the administering authority or the ITC will not be subject to judicial review.

The binational panel and extraordinary challenge committee system in the Agreement and provision for direct implementation of their decisions under subparagraph (A) are approved by the Congress in the implementing bill to be signed into law by the President. In the unlikely event, however, that subparagraph (A) is declared unconstitutional by the Supreme Court under paragraph (4)(A) and (H) of new section 516A(g), paragraph (7)(B) provides a fall-

back procedure to ensure implementation of Agreement obligations.

Subparagraph (B) authorizes the President on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the ITC within the period specified by the panel or committee. Upon acceptance by the President of a decision, the administering authority or the ITC shall, as under subparagraph (A), within the period specified by the panel or committee, take action not inconsistent with the decision. Any action by the President, administering authority, of the ITC shall not be subject to judicial review. As indicated in the Statement of Administrative Action, if subparagraph (B) does become operable, it is the Administration's intention that an Executive order will provide for the President's acceptance in whole, on behalf of the United States, of any panel or committee decision under the Agreement.

This provision is intended to specify the procedures by which the United States will honor the international obligations created by Article 1904 and Annex 1904.13 of the Agreement that make panel and committee decisions binding on the Parties. Direct implementation by the ITC and the administering authority of panel and committee decisions will mirror the existing remand procedures of the CIT. The Commission and the administering authority presently implement remand orders issued directly from the CIT in AD and CVD cases.

The provision of direct implementation is also intended to immunize the remand process from political influence and to preserve the independent status of the ITC. The Committee did not agree to implementing language proposed originally by the Administration which would have provided the President with discretion to direct the administering authority and the ITC to take necessary and appropriate action to implement panel and committee decisions. The Committee was concerned that authority for the President to direct the ITC could be prejudicial to the independence of the agency and create an unfortunate precedent for future legislation affecting the Commission. The Committee also did not want to expose the AD and CVD process to potential political pressure. AD and CVD laws and the international trade obligations of the United States must be implemented with objectivity and consistency in order to preserve the international credibility of the United States and to ensure that U.S. consumer and domestic business interests receive fair and even application of U.S. law. It was in furtherance of this interest in a depoliticized application of U.S. trade laws, for example, that the ITC was constituted as an independent agency. It is in furtherance of these same interests that the Committee adopted direct implementation language in subparagraph (A).

Subparagraph (B) was included in response to concerns presented by the Department of Justice that direct implementation of binational panel or committee decisions without Presidential involvement might be susceptible to potential challenge with respect to its consistency with the appointments clause of the U.S. Constitution. This Committee, the House Committee on the Judiciary, and leading legal experts on the Constitution believe that the direct imple-

mentation procedure is constitutional. Nonetheless, in order to eliminate any risk of uncertainty and to guarantee that panel and committee decisions will be implemented and U.S. international obligations under this important part of the Agreement fulfilled, the Committee agreed to the inclusion of a second, fallback provision in paragraph (7).

Subparagraph (B) does not require or call for the President to "direct" the administering authority or the ITC to implement the decision of a panel. Rather, it states that once the President has accepted a panel report, implementation is required. This preserves the independence of the ITC. Subparagraph (B) also does not authorize the President to issue any substantive instructions regarding the actions that should or should not be taken in response to a panel or committee decision or to accept some part of such a decision but not another part. Issuance of such Presidential directions would seriously undermine the independence of the ITC and could politicize the process. Presidential acceptance of a final decision must be of the decision as a whole and will simply trigger direct implementation as under subparagraph (A) by the Commission or administering authority.

4. *Requests for binational panel review.*—Under section 516A(a) of present law, any interested party that is a party to the AD or CVD proceeding has "standing" to seek judicial review of the AD or CVD determination. An "interested party" is defined under section 771(9) of the Tariff Act of 1930. Under Article 1904 of the Agreement, only the United States and Canada may formally request binational panel review of an AD or CVD determination, but both Parties agreed automatically to request such a review at the timely request of any person who would otherwise have standing to commence judicial review of a determination. Such requests must be made to the other Party within 30 days after publication or notice of the final determination in question.

Paragraph (8) of new section 516A(g) establishes procedures for requesting binational panel reviews. An interested party that was a party to the proceeding may file a request for a binational panel review with the U.S. Secretary of the joint Secretariat within 30 days after (1) publication of the notice of the final determination in the *Federal Register,* or (2) in the case of class or kind rulings, receipt of the notice of the determination by the Government of Canada. Receipt of a request by the U.S. Secretary shall be deemed a request by the United States for binational panel review. As provided under subparagraph (c), the United States may not request panel review absent a request by an interested party, i.e., one U.S. agency cannot request review of another agency's determination.

The administering authority, in consultation with the ITC, will prescribe regulations for the contents and form, manner, and style for requests. The interested party making the request must serve a copy on any other interested party to the proceeding and on the administering authority or the ITC, as appropriate. If an interested party files a request with the Canadian Secretary, the U.S. Secretary must serve a copy on any other interested party and on the administering authority or ITC, as appropriate. These procedures parallel notification requirements under section 516A of present law, and ensure that all interested parties are informed of whether

review has been requested in a binational panel or whether there is opportunity to commence judicial review under present law.

As provided in paragraph (9) of new section 516A(g), the administering authority and the ITC shall be represented in binational panel proceedings by attorneys who are employees of those respective agencies, i.e., in-house counsel. Interested parties who were parties to the proceeding shall have the right to appear and be represented by counsel before the binational panel. No provision in this implementing bill is needed to grant the ITC authority to be represented at its option by its own attorneys in the new judicial proceedings provided for in new section 516A(g)(4) as added by section 410(c) of this bill and in new section 777(d) as added by section 403(c), because such authority already exists under section 333(g) of the Tariff Act of 1930.

Challenges to Commission and Department of Commerce determinations often involve complex legal, economic, and accounting issues which require representation by attorneys with expertise in the issues being litigated. It is particularly important that such issues be presented to binational panels by counsel who can explain the agencies' technical concerns and articulate the significance of particular decisions in view of the administration of the AD and CVD laws as a whole. Paragraph (9) assures that the agency attorneys, who are most likely to have such expertise, will litigate such cases. The Committee expects the administering authority or the ITC to exercise their rights to challenge before a panel any improper request or claim of standing, in order to discourage requests to convene binational panel reviews that would be dismissed by U.S. courts if requests or improper claims of standing were made for judicial review.

Section 401(a) of the implementing bill adds a new paragraph (5) to section 516A(a) of present law as a conforming amendment to implement the requirement under Article 1904 that judicial review may not be commenced until the 30-day time period for requesting binational panel review has expired. New paragraph (5) provides that in the case of AD or CVD determinations involving Canadian merchandise on which binational panel review may be requested under new section 516A(g), judicial review under section 516A(a) of present law may not be commenced until the 31st day after notice of the determination or AD or CVD order is published in the *Federal Register* or, in the case of class or kind rulings, is received by the Government of Canada. Paragraph (1) of new section 516A(g) requires the administering authority, upon request, to inform any interested person of the date the Canadian Government received notice of a class or kind ruling, so that parties are aware of the applicable time limits for filing challenges.

Section 401(b) of the implementing bill amends section 516A(f) of the Tariff Act of 1930 to add definitions of various terms used in new section 516A(g).

Section 401(d) of the implementing bill clarifies the relationship between decisions of binational panels or extraordinary challenge committees and judicial review by U.S. courts of AD or CVD determinations involving non-Canadian merchandise or determinations involving Canadian merchandise on which there is no request for binational panel review. Section 401(d) adds a new paragraph (3) to

section 516A(b) of present law that specifies that in making a decision in any action brought under section 516A(a), a U.S. court shall not be bound by, but may take into consideration, a final decision by a binational panel or extraordinary challenge committee. The intent of this provision is to make clear that a panel or committee decision is binding only with respect to the particular matter before that panel and does not constitute binding precedent on U.S. courts. A U.S. court's consideration of panel decisions will be limited to the intrinsic persuasiveness of the statements in those decisions.

The binational panel process is not to effect any change in the substantive law of the United States or to provide any benefit to importers of goods from third countries. Thus, panel decisions will not be binding on the CIT, even if the same or related issues are raised in court actions reviewing determinations of the administering authority or the ITC. For example, in a case where the ITC has made an affirmative injury determination on the basis of cumulating Canadian imports with imports from other countries, the CIT is to decide the case before it (concerning imports from other countries) on the record as it was before the ITC at the time the ITC made its original determination. The outcome of a binational panel proceeding in a companion case concerning the Canadian imports that were cumulated shall have no bearing on the Commission's record or on the validity of the Commission determination as it affects imports from other countries. Moreover, the CIT, in deciding the companion case before it, shall disregard any action taken by the ITC to implement a final decision of a binational panel or extraordinary challenge committee. All other options for the treatment of panel and court decisions involving affirmative Commission determinations in which it cumulatively assesses the effect of Canadian and other imports are administratively unworkable and would accord the Agreement a substantive impact on the AD and CVD laws that the Agreement is not intended to have.

Section 402. Amendments to Title 28, United State Code

Title 28, United States Code, contains provisions that confer jurisdiction to the CIT for judicial review of AD and CVD determinations. Most determinations are subject to CIT jurisdiction under 28 U.S.C. 1581(c). A small, undefined group of AD and CVD matters are reviewable under the so-called "residual jurisdiction" provision of the CIT under 28 U.S.C. 1581(i). Certain amendments and clarifications to these provisions are necessary to implement the binational panel system under the Agreement.

Section 402(a) of H.R. 5090 amends 28 U.S.C. 1581(i) to withdraw jurisdiction from the CIT over an AD or CVD determination involving Canadian merchandise which is reviewable by a binational panel. Since the precise scope of the "residual jurisdiction" authority is unclear, in the absence of this amendment there is the risk that a litigant might seek to invoke this provision in order to circumvent the binational panel system established by new section 516A(g).

Article 1904(15) of the Agreement requires the United States and Canada to amend their respective laws to eliminate the issuance of declaratory judgments with respect to the goods of the other Party.

The CIT is empowered to issue declaratory judgments as a general matter, but has never provided such relief in AD or CVD cases because it generally has jurisdiction only over final determinations. However, in order to implement the obligation under the Agreement, sections 402(b) and (c) of the implementing bill amend 28 U.S.C. 2643(c) and 28 U.S.C. 2201 to provide that no court of the United States, including the CIT, may order declaratory relief in any civil action involving an AD or CVD proceeding regarding a class or kind of merchandise determined by the administering authority to be Canadian.

Finally, section 402(d) of the implementing bill adds a new section 1584 to title 28 to give the CIT exclusive jurisdiction of any civil action which arises under section 777(d) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking. This amendment to title 28 conforms to amendments under section 403 of the bill to section 777(d) to provide for enforcement of administrative sanctions against violations of protective orders.

Section 403. Conforming Amendments to the Tariff Act of 1930

Section 777 on the Tariff Act of 1930 provides for the protection by the administering authority and the ITC of business proprietary information submitted during the course of an AD or CVD proceeding. Section 777 also authorizes the release of certain business proprietary information under an administrative protective order to representatives of interested parties to a proceeding, and for the administering authority and the ITC to impose sanctions for violations of the terms of a protective order. In cases under judicial review, the administering authority and the ITC send business proprietary and privileged information contained in the administrative record of the proceeding to the CIT under seal. The court may then release business proprietary information to counsel under a judicial protective order.

Section 403(c) of H.R. 5090 adds a new subsection (d) to section 777 of the Tariff Act of 1930 to authorize the release of business proprietary information under protective order, subject to sanctions, as needed under the binational panel review system of the Agreement. Paragraph (1) of new subsection (d) provides that if a binational panel review of an AD or CVD determination is requested or an extraordinary challenge committee is convened under the Agreement, the administering authority or the ITC may make available under protective order to authorized persons a copy of all business proprietary (but not privileged) material in the administrative record made during the proceeding. "Authorized persons" is defined as the members of, and appropriate staff of, the panel or committee and the Secretariat; counsel, and their employees, for parties to the panel or committee proceeding; and any officer or employee of the U.S. Government designated by the administering authority or the ITC, as appropriate, to whom disclosure is necessary in order to implement the Agreement with respect to the proceeding. Decisions by the administering authority or the ITC concerning the disclosure or nondisclosure of proprietary material under protective order shall not be subject to judicial review. As provided under paragraph (2), the administering authority and the

ITC shall issue regulations setting forth requirements on the form and content of protective orders, and designed to provide an opportunity for participation in the binational panel proceeding equivalent to that available for judicial review in the courts of AD or CVD determinations.

New section 777(d) also provides for sanctions and enforcement against unauthorized disclosure of business proprietary information under protective order to panel members and other authorized persons. Paragraph (3) of new section 777(d) makes it unlawful for any person to violate, or to induce violation of, any provision of a protective order issued under new section 777(d). Canada will issue protective orders (called "undertakings") when Canadian AD or CVD determinations are being reviewed by binational panels. Some of these undertakings will be issued to authorized persons who reside in the United States and may not be amendable to enforcement by Canadian authorities in the event of violation. Therefore, paragraph (3) also makes violation of a Canadian undertaking a violation of U.S. law, subject to the same sanctions provided under paragraph (4) as are violations of U.S. protective orders.

As provided under paragraph (4) of new section 777(d), any person found by the administering authority or the ITC, after notice and opportunity for a hearing, to have committed a violation of paragraph (3) shall be subject to a civil penalty of up to $100,000 for each violation and to such other administrative sanctions as the administering authority or the ITC determines appropriate, including but not limited to debarment from practice before the agency. The amount of civil penalties and other sanctions will be assessed by the administering authority or the ITC by written notice (depending on which agency issued the protective order); the administering authority will assess the sanctions for violation of undertakings with Canada.

As provided under paragraph (5) of new section 777(d), any person against whom sanctions are imposed may obtain review of such sanctions by filing a notice of appeal in the CIT within 30 days from the date of the order imposing the sanctions and by simultaneously sending a copy by certified mail to the administering authority or the ITC, as appropriate. The agency shall promptly file in the CIT a certified copy of the record upon which the violation was found or the sanction imposed. The court will have the power to set aside the findings and order of the agency only if it finds they are not supported by substantial evidence. If any person fails to pay a civil penalty or to comply with other sanctions after the order becomes final and unappealable or after the CIT has entered final judgment in favor of the agency, paragraph (6) provides that an action may be filed in the CIT by the administering authority or the ITC to enforce the sanctions. In such an enforcement action, the validity and appropriateness of the final sanction order would not be subject to review.

Paragraph (7) of new section 777(d) authorizes the administering authority and the ITC, or their duly authorized agents, to have access to and the right to copy any pertinent document, paper, or record in the possession of any individual or entity; to summon witnesses, take testimony, and administer oaths; and to require any individual or entity to produce pertinent documents, books, or

records in order to conduct a hearing or carry out other functions and duties to investigate violations and impose sanctions under new section 777(d). Any member of the ITC and any person designated by the administering authority may sign subpoenas, and authorized members and agents of the administering authority and ITC may administer oaths and affirmations, examine witnesses, take testimony (including by deposition), and receive evidence. The attendance of witnesses and production of documented evidence may be required from any place in the United States at any designated place of hearing. Witnesses before the administering authority or the ITC shall be paid the same fees and mileage as are paid witnesses in Federal courts. If a subpoena is disobeyed, an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. The court may issue an order requiring the individual or entity to appear before the agency or to produce documentary evidence or give evidence concerning the matter. Any failure to obey the court order may be punished by the court as contempt.

Civil penalties are not provided under present AD or CVD law for violations of administrative protective orders, but authority is provided under section 777(c)(1)(B) of the Tariff Act of 1930 for appropriate administrative sanctions, including debarment from practice before the agencies. The ITC presently has general enforcement powers under section 333 of the Tariff Act of 1930 similar to the powers given the administering authority and the ITC to enforce protective orders issued for binational panel reviews. A person who improperly discloses protected information released under a court order to parties in AD or CVD litigation before the CIT may be held in contempt of court.

Section 403(a) of the implementing bill makes conforming amendments to sections 502(b) and 514(b) of the Tariff Act of 1930 to incorporate reviews and decisions by binational panels under the Agreement. Section 403(d) adds a definition of the term "United States-Canada Agreement" to section 771 of the Tariff Act of 1930 for purposes of the AD and CVD laws.

Section 404. Amendments to Antidumping and Countervailing Duty Law

Section 404 of H.R. 5090 provides that any amendment enacted after the Agreement enters into force to the CVD law under section 303 or the AD or CVD laws under Title VII of the Tariff Act of 1930 or to any other statute which provides for judicial review of final AD or CVD determinations or indicates the standard of review to be applied shall apply to Canada only to the extent specified in the amendment.

This provision implements Article 1902 of the Agreement, under which the United States and Canada reserve the right to change or modify their respective AD or CVD laws, but are obligated to apply an amendment of these laws to good from the other Party only if the application is specified in the amending statute.

Section 405. Organizational and Administrative Provisions Regarding the Implementation of Chapters 18 and 19 of the Agreement

Section 405 of H.R. 5090 establishes the organization and procedures in domestic law for administering U.S. responsibilities required by the binational panel review and extraordinary challenge committee system under chapter 19 of the Agreement and for implementing U.S. reponsibilities with respect to the panels and Secretariat under chapter 18 of the Agreement.

As provided under chapter 19 of the Agreement, a binational panel will be convened to review a particular AD or CVD determination whenever panel review is properly requested. The United States and Canada, in consultation, will each prepare a roster of 25 individuals to serve as panelists. These individuals must be citizens of the United States or Canada and may not be officers of either government. Each Party will appoint two members of each panel, normally from the roster, and attempt to agree on a fifth panelist. Failing such agreement, the four appointed panelists will choose the fifth, or if they cannot agree, the fifth panelist will be chosen by lot from the roster. Panelists must be selected for particular reviews no later than the 61st day after the panel has been requested. For extraordinary challenge committees, the Parties will establish a binational ten-person roster of judges or former judges, with selection of three members to each committee under a similar process as for panels.

Paragraph (1) of section 405(a) establishes an interagency group within the present interagency trade organization under section 242 of the Trade Expansion Act of 1962 to be chaired by the USTR and to consist of representatives of other agencies the USTR considers appropriate. The functions of this group shall be to (1) prepare by January 3 of each year a list of individuals who are qualified to serve on binational panels or extraordinary challenge committees convened under chapter 19 of the Agreement, and to prepare by July 1 a list of individuals qualified to be added to the final candidate list for the particular year if the USTR so requests; (2) exercise oversight of the administration of the U.S. Secretariat; and (3) make recommendations to the USTR regarding the convening of extraordinary challenge committees.

Paragraphs (2)–(7) of subsection (a) set forth the procedures for the selection by the USTR, after consultations with appropriate Congressional Committees, of individuals eligible to serve on panels and committees under chapter 19 of the Agreement. By no later than January 3 of each year, the USTR will make selections from the lists prepared by the interagency group for a preliminary candidate list of individuals eligible to serve on binational panels and for a preliminary candidate list of individuals eligible to serve as members of extraordinary challenge committees. The USTR will submit these lists to the Senate Committee on Finance and the House Committee on Ways and Means (the "appropriate Congressional Committees"), and then consult with these Committees on the individuals on these lists. USTR may add or delete individuals with written notice to the Committees following the consultations. By no later than March 31 of each year, the USTR will submit to the Committees the final candidate lists of individuals selected by

the USTR as eligible to serve on binational panels and extraordinary challenge committees convened during the one-year period beginning on April 1 of that year. An individual not on a preliminary list may be included on a final candidate list only if the USTR provided written notice of the addition to the appropriate Congressional Committees at least 15 days before submission of that final list.

No additions may be made to the final candidate lists for a particular year after they are submitted to the appropriate Congressional Committees unless the USTR, before July 1 of that year, determines that additional individuals are needed. In such circumstances a similar selection process will apply: The USTR will request the interagency group to prepare a list of individuals qualified to be added to the candidate list, select individuals from that list to include in a proposed amendment to the final candidate list, submit the proposed amendment to the appropriate Congressional Committees by no later than July 1 of that year, and then consult those Committees. The USTR may add or delete individuals from a proposed amendment after the consultations, and must provide written notice to the Committees of any addition or deletion. Individuals may be added to the final form of the amendment only if at least 15 days advance written notice of the addition is submitted to the Committees. The USTR must submit the final form of any proposed amendment to a final candidate list to the appropriate Congressional Committees by no later than September 30 of that year. No additions may be made to the final form of an amendment after it is submitted to the Committees. The amendment will take effect on October 1 and the individuals on the final amendment to a final candidate list will be eligible to serve during the six-month period from October 1 to April 1 of the following year.

The USTR is the only official authorized to act on behalf of the U.S. Government in making any selection or appointment, solely by the United States or jointly with Canada under the terms of the Agreement, of an individual to the rosters for binational panels or extraordinary challenge committees or to the panels or committees convened under chapter 19. Such selections and appointments may be only of individuals on the appropriate final candidate list, including any list as amended that was submitted to the appropriate Congressional Committees to serve during that one-year period beginning April 1. The only one-time exception to this general requirement applies if the Agreement enters into force after January 3, 1989. In that circumstance, the USTR may select individuals on the preliminary candidate lists submitted to the appropriate Congressional Committees for the rosters and for panels and committees during the three-month period after the Agreement enters into force. For that year, the interagency group would prepare lists of qualified individuals and the USTR would submit the preliminary candidate lists to the appropriate Congressional Committees within 30 days after the Agreement enters into force and submit the final candidate lists to those Committees within 3 months after the Agreement enters into force.

The selection of individuals for any lists or rosters or appointment by the USTR for panels or committees shall be made without regard to political affiliation and based on criteria in the Agreement requiring good character, high standing and repute, objectivi-

ty, reliability, sound judgment, and general familiarity with international trade laws. The Statement of Administrative Action sets forth more detailed criteria and procedures for selection of panel and committee candidates, including financial disclosures, to ensure competence and objectivity in reviews and no conflicts of interest. The United States and Canada will also establish a joint code of conduct for panelists as required by the Agreement. Since binational panels will substitute for review by U.S. judges of the application of national laws and make decisions that are binding, the Committee believes it is essential to require appropriate Congressional review of potential panelists in order to further assure selection of candidates with high professional and personal standards on a nonpolitical basis.

Section 405(b) of the implementing bill provides that individuals appointed by the United States to serve on panels or committees convened under chapter 19 of the Agreement, and individuals designated to assist these appointees, shall not be considered to be employees or special employees of, or otherwise affiliated with, the U.S. Government. As provided in section 405(c), individuals serving on panels or committees, and individuals designated to assist them, shall be immune from suite and legal process relating to acts they perform in their official capacity and within the scope of their functions as panelists or committee members or as assistants. The only exception to this immunity are violations of protective orders or undertakings issued under new section 777(d) of the Tariff Act of 1930 as added by section 403(c) of the implementing bill.

Section 405(d) of the implementing bill authorizes the administering authority for the AD and CVD laws, the ITC, and the USTR to promulgate regulations as are necessary or appropriate to carry out actions to implement their respective responsibilities under chapters 18 and 19 of the Agreement.

Section 406(e) of the implementing bill authorizes the President to establish within any department or agency of the Federal Government a United States Secretariat. The U.S. Secretariat, subject to the oversight of the interagency group established under subsection (a)(1), shall facilitate the operation of chapters 18 and 19 of the Agreement and the work of the binational panels and extraordinary challenge committees convened under those chapters. The U.S. Secretariat shall not be considered an agency for purposes of 5 U.S.C. 552 and, therefore, will not be subject to the Freedom of information Act, the Privacy Act, or the Government in the Sunshine Act. This provision implements the U.S. obligation under Article 1909 of the Agreement for each Party to establish a permanent Secretariat office, which will function as a "clerk of the court" and service meetings of panels and committees.

Section 406. Authorization of Appropriations for the Secretariat, the Panels, and the Committees

Section 406 of H.R. 5090 authorizes funding for the U.S. Secretariat and the U.S. share of the expenses of the binational dispute settlement and review panels. Subsection (a) authorizes appropriations to the department or agency within which the U.S. Secretariat is established of the lesser of such sums as may be necessary or $5 million for each fiscal year after 1988, to be used for the establish-

ment and operation of the U.S. Secretariat and for payment of the U.S. share of the expenses of dispute settlement proceedings under chapter 18 of the Agreement. Paragraph (1) of subsection (b) authorizes to be appropriated to the Office of the USTR for fiscal year 1989 such sums as may be necessary to pay during that year the U.S. share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19. Paragraph (2) authorizes the USTR to transfer appropriated funds to any U.S. department or agency in order to facilitate payment of these expenses. Paragraph (3) provides that funds appropriated for payment of such expenses during any fiscal year may be expending only to the extent they do not exceed the amount authorized under paragraph (1) for that year, unless a subsequent law specifically provides that paragraph (1) shall not apply.

Section 406 implements the obligations under Article 1909 and Annex 1901.2 of the Agreement that each Party will be responsible for the operating costs of its Secretariat office and the Parties will share the expenses of binational panels. The authorization of appropriations to the USTR will maintain the funding for binational panels and committees within the jurisdiction of the Congressional committees that must be consulted by the USTR on the lists of candidates who may be selected for these panels and committees.

Section 407. Testimony and Production of Papers in Extraordinary Challenges

Article 1904 of the Agreement establishes a procedure that may be used in narrowly-defined circumstances by the Government of either Party to challenge final decisions of a binational panel. Allegation that a panelist was guilty of gross misconduct, bias, or serious conflict of interest, or otherwise materially violated the rules of conduct and that that action materially affected the panel's decision and threatens the integrity of the binational panel review process is a basis for a Party requesting an extraordinary challenge committee. The committee rules of procedure to be developed by the Parties will provide for the taking of evidence by the committee where such an ethical violation by a panelist is alleged.

Section 407 of H.R. 5090 contains provisions to assist an extraordinary challenge committee in carrying out its functions and duties when such a violation of the rules of conduct by a binational panelist is alleged. Section 407 gives a committee (1) access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration in the possession of any individual or entity; (2) authority to summon witnesses, take testimony, and administer oaths; (3) authority to require any individual or entity to produce documents, books, or records relating to the subject matter; and (4) authority to require an individual or entity to furnish in writing information pertaining to the matter. Any member of the committee may sign subpoenas and authorized members may administer oaths and affirmations, examine witnesses, take testimony (including by deposition), and receive evidence. If a subpoena is disobeyed, the committee may request the Attorney General to invoke the aid of any U.S. district or territorial court in requiring the attendance and testimony of witnesses and production of documentary evidence, that may be required from any place in

the United States at any designated place of hearing. Any failure to obey a court order may be punished by the court as contempt.

Section 408. Requests for Review of Canadian Antidumping and Countervailing Duty Determinations

Section 408 of H.R. 5090 establishes a parallel procedure to that established under section 401 for the United States to implement the application of the binational panel review system provided under chapter 19 of the Agreement to final AD and CVD determinations by the Canadian Government on exports of U.S. merchandise to Canada. A person within the meaning of Article 1904(5) of the Agreement may file a request with the U.S. Secretary for a binational panel review of a final AD or CVD determination of a competent investigating authority of Canada within 30 days of the publication or receipt of notice of the determination. Receipt of the request by the U.S. Secretary shall be deemed a request by the United States for a binational panel review. The administering authority will prescribe regulations on the content and form of requests. Requests by private parties shall not preclude the United States, Canada, or any other person from challenging before a binational panel the basis for the particular request. Requests by the United States on its own behalf for binational panel reviews of Canadian determinations will be made by the U.S. Secretary. The U.S. Secretary will serve a copy of any request under section 407 on all persons who would be regarded as interested parties to the proceeding.

Section 409. Subsidies

Article 1906 of the Agreement contemplates the binational panel review system as an interim procedure pending the development and implementation of a substitute system of rules in the bilateral trade. Article 1907 requires the Parties to establish a Working Group to seek to develop more effective rules and disciplines concerning the use of government subsidies and a substitute system of rules for dealing with unfair pricing and government subsidies. Section 409 of H.R. 5090 provides a negotiating mandate to the President for an agreement with Canada on unfair pricing and subsidy practices and sets forth an interim procedure for identifying U.S. industries likely to be facing subsidized import competition.

1. Negotiations on subsidies.—Section 409(a) of the implementing bill authorizes the President to enter into an agreement with Canada, including an agreement to amend the Agreement, on rules applicable to bilateral trade that deal with unfair pricing and government subsidization and provide for increased discipline on subsidies. Paragraph (2) sets forth U.S. objectives in such negotiations to include (1) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact on bilateral trade; and (2) attainment of increased and more effective discipline on Canadian Government (including provincial) subsidies having the most significant adverse impact on U.S. producers that compete with subsidized Canadian products in the U.S. and Canadian markets. Special emphasis should be given in negotiations to obtain discipline on Canadian

subsidy programs that adversely affect U.S. industries which directly compete with subsidized imports.

Paragraph (3) requires the U.S. members of the Working Group established under Article 1907 of the Agreement to consult regularly with the Senate Committee on Finance and the House Committee on Ways and Means, as well as with the private sector advisory committees established under section 135 of the Trade Act of 1974, on (1) the issues being considered by the Working Group, and (2) as appropriate, U.S. objective and strategy in the negotiations. The U.S. members must also submit an annual report beginning in January 1990 to these Congressional committees on the progress being made in the negotiations to obtain an agreement that meets the objectives.

An agreement entered into under subsection (a), including an amendment to the Agreement, would require Congressional approval of implementing legislation to make any necessary or appropriate changes in U.S. domestic laws. Paragraph (4) provides that the "fast track" procedures under section 151 of the Trade Act of 1974 that normally apply to consideration of such legislation will not apply to any bill or joint resolution that implements an agreement entered into under paragraph (1) unless the President determines and notifies the Congress that the agreement meets certain requirements. The President must determine that the agreement (1) will provide greater discipline over government subsidies and no less discipline over unfair pricing practices by producers than provided by the GATT Subsidies and Antidumping Codes approved under the Trade Act of 1974, taking into account the effects of the Agreement, and (2) will neither undermine such multilateral discipline on subsidies or dumping nor detract from U.S. efforts to increase such multilateral discipline in or subsequent to the Uruguay Round of multilateral trade negotiations.

These prerequisites for use of the "fast track" procedures apply notwithsatnding any other provision of this Act or any other law. As provided under section 102(e) of the implementing bill, any agreement in the form of an amendment to the Agreement that requires changes in U.S. laws could be implemented under the "fast track" procedure only if the bill could be implemented under the "fast track" procedure only if the bill is submitted to the Congress within 30 months after the Agreement enters into force.

2. Identification of industries.—Section 409(b) of the implementing bill establishes a special procedure for identifying U.S. industries that are likely to be facing subsidized import competition and a deteriorating competitive position. Any entity (including a trade association, firm union, or group of workers) that is representative of a U.S. industry may file a petition with the USTR for identification if it has reason to believe that—

> (1) The industry is likely to face increased competition (a) from subsidized imports from Canada, with which it directly competes, as a result of implementation of the Agreement, or (b) from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariff or other trade barriers under a future trade agreement in force after January 1, 1989; and

(2) The industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to that country.

The USTR, in consultation with the Secretary of Commerce, shall decide within 90 days whether to identify the industry on the basis that there is a reasonable likelihood that it may face both the subsidization and the deterioration.

At the request of the entity representing an industry that is identified, the USTR shall compile and make available to that industry information on foreign subsidy programs under section 305 of the Trade Act of 1974, and/or recommend to the President that an investigation by the ITC be requested under section 332 of the Tariff Act of 1930. The industry may request the USTR to obtain an update of such information as often as annually until an agreement on adequate rules and disciplines relating to government subsidies is reached.

As provided under paragraph (4), the USTR and the Secretary of Commerce shall review the information and consult with the identified industry with a vew to deciding whether any action is appropriate under section 301 of the Trade Act of 1974 or under the CVD law, including self-initiation of an investigation. In determining whether to initiate any section 301 investigation or an investigation under any other trade law other than Title VII of the Tariff Act of 1930, the USTR, after consultation with the Secretary of Commerce, (1) shall seek the advice of the private sector advisory committees established under section 135 of the Trade Act of 1974, (2) shall consult with the Senate Committee on Finance and House Committee on Ways and Means, (3) shall coordinate with the interagency committee established under section 242 of the Trade Expansion Act of 1962, and (4) may ask the President to request advice from the ITC. If an investigation is self-initiated under section 301 as a result of the review and the President, following the investigation (including any applicable dispute settlement proceedings), determines to take section 301 action, he shall give preference to actions that most directly affect the products that benefits from governmental subsidies and were the subject to the investigation, unless there are no significant imports of the product or the President otherwise determines that application of the action to other products would be more effective.

Paragraph (5) makes clear that any decision or action by the USTR or the Secretary of Commerce under section 409 shall not in any way prejudice the right of any industry to file a petition under any trade law; prejudice, affect, or substitute for any proceeding, investigation, determination, or action by the Secretary of Commerce, ITC, or USTR pursuant to such a petition; or prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974, the AD or CVD laws, or any other trade law. Nothing in the provision may be construed to alter in any manner "standing" requirements presently in effect or to add additional requirements for standing under any U.S. law.

Section 409 responds to concerns raised by Members of Congress and the private sector about the absence of provisions in the Agree-

ment to place more effective disciplines on the use of government subsidies that may adversely affect U.S. industries. The Committee emphasizes that the absence of such provisions should not in any way be construed as any encouragement or endorsement of the use of subsidies by either government. On the contrary, the Committee expects countervailing duty law to be used and applied vigorously against any Canadian Government subsidy practices that meet the criteria of the law and materially injure U.S. industries. Article 1902 of the Agreement itself reserves the right of each Party to apply, as well as to modify or change, its antidumping and countervailing duty laws to goods imported from the other Party.

The special procedure under subsection (b) is intended to apply only during the interim period before more effective rules and disciplines are developed on the use of government subsidies by the particular country. Such rules and disciplines may be multilateral, such as an agreement in the Uruguay Round, or a bilateral agreement with Canada or a designated country in question. The Committee intends that the criteria under subsection (b)(1)(A) of likely increased competition from subsidized imports with which an industry directly competes result from implementation of trade agreement benefits that apply to that industy. In other words, a U.S. industry should not be identified if the particular foreign industry with which it competes is not subject to liberalization of tariff or other trade barriers to the U.S. market. One U.S. industry cannot "bootstrap" trade agreement concessions that benefit another industry in a designated foreign country for purposes of meeting the identification requirement under subparagraph (A).

The Committee also emphasizes that no causal relationship is implied between the subsidy criteria under subparagraph (A) and the economic detrioration criteria under subparagraph (B) of paragraph (1). Whether actionable subsidies and any causal relationship with economic deterioration in fact exist would have to be determined in an investigation under the appropriate trade law. The procedure established under subsection (b) assures attention to and consideration of economic problems that particular U.S. industries may face from subsidized foreign competition as a result of the lowering of barriers under trade agreements. However, this procedure does not substitute for, or prejudge in any way, the investigations and determinations required under the unfair trade practice or import relief laws. Any actual remedy or relief for the domestic industry may be obtained under section 301, the CVD law, or other trade laws only if there is a determination under the applicable procedures that the criteria of the particular law are met.

Section 410. Termination of Agreement

Section 410 of H.R. 5090 addresses circumstances in which the Agreement may be terminated. Article 1906 authorizes either Party to terminate the Agreement if the Parties fail to agree to implement a new system for applying AD and CVD duties to bilateral trade within seven years. As provided under Article 2106, the Agreement remains in force unless terminated by either Party upon six-month notice.

Subsection (a) requires the President to submit a report to the Congress explaining why continued adherence to the Agreement is

in the U.S. national economic interest if (1) no agreement is entered into between the United States and Canada on a substitute system of rules for AD and CVD duties within seven years after the Agreement enters into force, and (2) the President decides not to exercise the right under Article 1906 to terminate the Agreement.

Subsection (B) addresses the contingency if the Agreement should cease to be in force at some future date. If on that date an investigation or enforcement proceeding concerning the violation of an AD or CVD protective order issued under section 777(d) as added by section 403(c) of the implementing bill or Canadian undertaking is pending, the investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with that section. If on that date a binational panel review is pending or has been requested on a final AD or CVD determination, that determination will be reviewable in the CIT as under present law. The time limits for commencing such judicial review shall not begin to run until the date the Agreement ceases to be in force.

TITLE V. EFFECTIVE DATES AND SEVERABILITY

Section 501. Effective Dates

Section 501 of H.R. 5090 provides in general that the provisions of the implementing bill and the amendments to other statutes made by the implementing bill shall take effect on the date the Agreement enters into force. The only exceptions that shall take effect on the date of enactment of this Act are section 1 (short title and table of contents), section 2 (stating the purposes of the Act), Title I (general provisions that relate to approval of the Agreement, its relationship to U.S. law, and procedures and requirements for future amendments), section 304 except subsection (f) (objectives and authority for negotiations regarding certain sectors), section 309 (relating to restraints on steel products), this section 501, and section 502 (severability).

Subsection (c) provides for the termination of the provisions of this Act (except for this subsection and the transition provisions under section 410 relating to binational panel reviews) and of amendments to other laws made by this Act on the date the Agreement ceases to be in force. As provided under Article 2105, the Agreement shall remain in force unless either Party terminates it upon 6 months notice. Section 501(c) ensures that provisions of U.S. laws to implement the Agreement cease to have effect if those bilateral rights and obligations terminate.

Section 502. Severability

Section 502 of H.R. 5090 contains a standard severability clause ensuring that if any provision of the implementing bill, any amendment to other laws made by the United States-Canada Free-Trade Agreement Implementation Act of 1988, or the application of a provision or amendment to any person or circumstances is held to be invalid by the courts, the remainder of the Act, the remaining amendments and other applications shall not be affected thereby.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 5090 was ordered favorably reported by the Committee on Ways and Means to the House by a record vote of 35 yeas, 1 noe.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) or rule XI of the Rules of the House of Representatives, the Committee concludes on the basis of hearing testimony, correspondence from Members of Congress and the private sector, and from review of the provisions of the Free Trade Agreement that approval and implementation of the Agreement would be in the U.S. economic interest.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

BUDGET EFFECTS AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the following statements are made with respect to Committee action on the bill.

With respect to subdivision (B) of clause 2(l)(3) the Committee states that:

(a) There is no new entitlement authority and thus comparisons to the Committee's 302(b) allocation are non-applicable;

(b) There is no new spending authority as described in section 401(c)(2) of the Congressional Budget and Impoundment Control Act of 10974, as amended;

(c) The report includes Congressional Budget Office projections of budget authority, budget outlays and revenues for fiscal year 1989 and the four ensuing years; and

(d) The estimate by the Congressional Budget Office indicates no change in the level of assistance to State and local governments.

In compliance with clause 7(a) of rule XIII and with clause 2(l)(3)(B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 5090 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFFICE,
Washington, DC, August 3, 1988.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5090, the United States-Canada Free-Trade Agreement

Implementation Act of 1988. The attached table represents the estimated budget impact of the bill, as introduced on July 26, 1988.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Douglas Criscietello, who can be reached at 226–2850.

Sincerely,

JAMES L. BLUM,
Acting Director.

ESTIMATED COSTS TO THE FEDERAL GOVERNMENT TO IMPLEMENT THE UNITED STATES-CANADA FREE-TRADE AGREEMENT—H.R. 5090 AND S. 2651, AS INTRODUCED

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
NET REVENUE EFFECTS					
Estimated revenues	−97	−198	−303	−421	−546
DIRECT SPENDING					
Commodity Credit Corporation:					
Estimated budget authority	2	2	3	4	4
Estimated outlays	2	2	3	4	4
Customs user fees:					
Estimated budget authority		22	1		
Estimated outlays		22	1		
Total direct spending:					
Estimated budget authority	2	24	4	4	4
Estimated outlays	2	24	4	4	4
AUTHORIZATIONS					
U.S. Secretariat:					
Estimated authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Binational panels and committees:					
Estimated authorization level [1]	2				
Estimated outlays	2				
Other costs:					
Estimated authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Total authorizations:					
Estimated authorization level	4	2	2	2	2
Estimated outlays	4	2	2	2	2
Net increase in the deficit	103	224	309	427	552

[1] Costs of about $2 million a year for binational panels and committees would be expected to continue in years after 1989, but the bill only authorizes appropriations for fiscal year 1989.

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5090 would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5090 as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

(10) The fee charged under subsection (a)(10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided,* That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further,* That the Secretary of the Treasury may, in his

discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes[.]: *Provided further, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.*

* * * * * * *

SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS—IMPORTATION PROHIBITED IN CERTAIN CASES.

(a) * * *

(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if—

(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and

(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.

* * * * * * *

SEC. 311. BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided,* That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further,* That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

* * * * * * *

No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a

duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.

(a) * * *

(b) The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)* from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)* or domestic consumption the provisions of this section shall apply, or

* * * * * * *

(d) Upon the exportation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)* of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that

would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury.

* * * * * * *

SEC. 313. DRAWBACK AND REFUNDS.

(a) * * *

* * * * * * *

(n) For purposes of Subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, to Canada of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act of 1988 does not constitute an exportation.

(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, mayu not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY DUTIES

* * * * * * *

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) * * *

(b) REVERSAL OF SECRETARY'S RULINGS.—No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, [or a final decision of the United States Court of International Trade.] *a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.*

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) REQUIREMENTS.—Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and

(2) are normally keep in the ordinary course of business.

(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.

[b**]** *(c)* PERIOD OF TIME.—The records required by subsection (a) *and (b)* of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.

[c**]** *(d)* LIMITATION.—For the purposes of this section and section 509, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.

SEC. 514. FINALITY OF DECISIONS: PROTESTS.

(a) * * *

(b) With respect to determinations made under section 303 of this Act or title VII of this Act which are reviewable under section 516A of this title, determinations of the appropriate customs officer are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States, Court of International Trade, *or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the United States-Canada Free-Trade Agreement.*

* * * * * * *

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) * * *

* * * * * * *

(5) TIME LIMITS IN CASES INVOLVING CANADIAN MERCHANDISE.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provision of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after—

(A) the date of publication in the Federal Register of—

(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or

(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B).

(b) STANDARDS OF REVIEW.—

(1) * * *

* * * * * * *

(3) EFFECT OF DECISIONS BY UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the Agreement.

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(5) AGREEMENT.—The term "Agreement" means the United States-Canada Free Trade Agreement.

(6) UNITED STATES SECRETARY.—The term "United States Secretary" means the secretary provided for in paragraph 4 of Article 1909 of the Agreement.

(7) CANADIAN SECRETARY.—The term "Canadian Secretary" means the secretary provided for in paragraph 5 of Article 1909 of the Agreement.

(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING CANADIAN MERCHANDISE.—

(1) DEFINITION OF DETERMINATION.—For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority.

(2) EXCLUSIVE REVIEW OR DETERMINATION BY BINATIONAL PANELS.—If binational panel review of a determination is requested pursuant to Article 1904 of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.—

(A) IN GENERAL.—A determination is reviewable under subsection (a) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor Canada requested review by a binational panel pursuant to Article 1904 of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor Canada requested review of the original determination, or

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the Agreement.

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the United States-Canada Free-Trade Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under Chapter 19 of the Agreement violates the Constitution may be brought in the United States Court of Appeals for the District of Columbia Circuit. Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States Code.

(B) OTHER CONSTITUTIONAL REVIEW.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) COMMENCEMENT OF REVIEW.—Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party

who is a party to the proceeding in connection with which the matter arises may commerce an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) TRANSFER OF ACTIONS TO APPROPRIATE COURT.—Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) FRIVOLOUS CLAIMS.—Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure.

(F) SECURITY.—

(i) SUBPARAGRAPH (A) ACTIONS.—The security requirements of Rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) SUBPARAGRAPH (B) ACTIONS.—No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompensate parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) PANEL RECORD.—The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) APPEAL TO SUPREME COURT OF COURT ORDERS ISSUED IN SUBPARAGRAPH (A) ACTIONS.—Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) LIQUIDATION OF ENTRIES.—

(A) APPLICATION.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) GENERAL RULE.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the Canadian Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the Agreement.

(iv) JUDICIAL REVIEW.—Any action taken by the administering authority or the United States Customs

Service under this subparagraph shall not be subject to judicial review and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904.—

(A) IN GENERAL.—If a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) APPLICATION IF SUBPARAGRAPH (A) HELD UNCONSTITUTIONAL.—In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of

the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) SERVICE BY INTERESTED PARTY.—If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the Canadian Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review under article 1904 of the Agreement of a determination.

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of Canada received notice of the determination under article 1904(4) of the Agreement.

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PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

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SEC. 562. MANIPULATION IN WAREHOUSE.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in

bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same [: *Provided*, That upon permission therefore being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouse established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of changes in condition.]; *except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom without payment of duties—*

(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of such Act of 1988;

(2) for exportation to any foreign country except Canada; and

(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (1) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custo-

dy may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) * * *

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(18) UNITED STATES-CANADA AGREEMENT.—The term "United States-Canada Agreement" means the United States-Canada Free Trade Agreement.

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SEC. 777. ACCESS TO INFORMATION.

(a) * * *

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(d) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO THE UNITED STATES-CANADA AGREEMENT.—

(1) ISSUANCE OF PROTECTIVE ORDERS.—

(A) IN GENERAL.—If binational panel review of a determination under this title is requested pursuant to article 1904 of the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material (but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement) in the administrative record made during the proceeding in question.

(B) AUTHORIZED PERSONS.—For purposes of this subsection, the term "authorized persons" means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees of such counsel, and

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to implement the United States-Canada Agreement with respect to such proceeding.

(C) REVIEW.—A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) CONTENTS OF PROTECTIVE ORDER.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropritate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) PROHIBITED ACTS.—It is unlawful for any person to violate, or to induce the violation of, any provision of a protection order issued under this subsection or to violate, or to induce the violation of, any provision of an undertaking entered into with an authorized agency of Canada to protect proprietary material during binational panel review pursuant to article 1904 of the United States-Canada Agreement.

(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.—Any person who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordane with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation, of an undertaking entered into by any person with an authorized agency of Canada.

(5) REVIEW OF SANCTIONS.—Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering au-

thority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(6) ENFORCEMENT OF SANCTIONS.—If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) TESTIMONY AND PRODUCTION OF PAPERS.—

(A) AUTHORITY TO OBTAIN INFORMATION.—For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commis-

sion, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) MANDAMUS.—Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) DEPOSITIONS.—For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

* * * * * * *

SECTION 3 OF THE ACT OF JUNE 18, 1934

AN ACT To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes

SEC. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, many, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided*, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may

be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further*, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further*, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further*, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be sub-

ject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended: *Provided further*, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: *Provided further*, That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such imporation, be entered as American goods returned: *Provided further, That with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.*

* * * * * * *

MEAT IMPORT ACT OF 1979

SEC. 2. (a) This section may be cited as the "Meat Import Act of 1979".

(b) For purposes of this section—

(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(2) The term "meat articles" means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under—

(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved.

Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in

accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).

(3) The term "Secretary" means the Secretary of Agriculture.

(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed [1,204,600,000] *1,147,600,000* pounds; except that this aggregate quantity shall be—

(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

(2) adjusted further under subsection (d).

For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in items 100.40, 100.43, 100.45, 100.53, and 100.55 of such Schedules entered during such year.

* * * * * * *

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than [1,250,000,000] *(A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (l), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (l)* pounds. The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts).

* * * * * * *

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries *other than Canada* on the basis of the shares of the United States market for meat articles such countries *other than Canada* supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

* * * * * * *

[(l) The Secretary of Agriculture shall study the regional economic impact of imports of meat articles and report the results of

his study, together with any recommendations (including recommendations for legislation, if any) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate not later than June 30, 1980.]

(l) If the President—

(1) has—

(A) proclaimed limitations on meat articles under the preceding provisions of this section, or

(B) entered into one or more agreements other than with Canada regarding meat articles pursuant to section 204 of the Agricultural Act of 1956; and

(2) determines that the Government of Canada has not taken equivalent action;

the President may by proclamation limit the total quantities of articles described in subsection (b)(2)(A), (B), and (C) and originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) that may enter the United States. A limitation imposed under the preceding sentence shall be only to the extent that, and only for such period of time as, the President determines sufficient to prevent frustration of the limitations placed on meat articles imported from other countries under this section or actions taken with respect to meat articles under agreements negotiated pursuant to section 204 of the Agricultural Act of 1956.

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SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT

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TITLE I—AGRICULTURAL ADJUSTMENT

* * * * * * *

SEC. 22. (a) * * *

* * * * * * *

(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirments of this section; *except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.*

ACT OF MARCH 4, 1913

CHAP. 145.—An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and fourteen

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BUREAU OF ANIMAL INDUSTRY

SALARIES, BUREAU OF ANIMAL INDUSTRY: One chief of bureau, $5,000; one chief clerk, $2,500; one editor and compiler, $2,250; six clerks, class four; one clerk $1,680; twelve clerks, class three; two

clerks, at $1,500 each; twenty-two clerks, class two; two clerks, at $1,380 each; three clerks, at $1,320 each; one clerk, $1,300; one clerk, $1,260, thirty-nine clerks, class one; one clerk, $1,100; one clerk, $1,080; fifty clerks, at $1,000 each; two clerks, at $960 each; sixty-four clerks, at $900 each; one architect, $2,000; one architect, $900; one illustrator, $1,400; four inspector's assistants, at $1,000 each; twelve inspector's assistants, at $840 each; one laboratory assistant, $1,200; two laboratory assistants, at $900 each; one laboratory helper, $1,020; two laboratory helpers, at $840 each; one laboratory helper, $720; one laboratory helper, $600; one laboratory helper, $480; one instrument maker, $1,200; one carpenter, $1,100; two carpenters, at $1,000 each; one messenger and custodian, $1,200; one messenger and custodian, $1,000; nine messengers, skilled laborers, or laborers, at $840 each; ten messengers, skilled laborers, or laborers, at $720; twenty-three messengers, messenger boys, or laborers, at $480 each; six messengers or messenger boys, at $360 each; one skilled laborer, $1,000; thirty-three skilled laborers, at $900 each; two skilled laborers, at $840 each; seven skilled laborers, at $720 each; one skilled laborer or laborer, $780; two laborers or messengers, at $660 each; nine laborers, messengers or messenger boys, at $600 each; three laborers, messengers or messenger boys, at $540 each; one watchman, $720; one charwoman, $600; one charwoman, $540; eleven charwomen, at $480 each; four charwomen, at $360 each; one charwomen, $300; two charwomen, at $240 each; in all, $359,250.

* * * * * * *

That from and after July first, nineteen hundred and thirteen, it shall be unlawful for any person, firm, or corporation to prepare, sell, barter, or exchange in the District of Columbia, or in the Territories, or in any place under the jurisdiction of the United States, or to ship or deliver for shipment from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product intended for use in the treatment of domestic animals, and no person, firm, or corporation shall prepare, sell, barter, exchange, or ship as aforesaid any virus, serum, toxin, or analogous product manufactured within the United States and intended for use in the treatment of domestic animals, unless and until the said virus, serum, toxin, or analogous product shall have been prepared, under and in compliance with regulations prescribed by the Secretary of Agriculture, at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture as hereinafter authorized. [That the importation into the United States, without a permit from the Secretary of Agriculture, of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, are hereby prohibited.] *The importation into the United States of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of*

domestic animals, is prohibited without (1) a permit from the Secretary of Agriculture, or (2) in the case of an article originating in Canada, such permit or, in lieu of such permit, such certification by Canada as may be prescribed by the Secretary of Agriculture. The Secretary of Agriculture is hereby authorized to cause the Bureau of Animal Industry to examine and inspect all viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are being imported or offered for importation into the United States, to determine whether such viruses, serums, toxins, and analogous products are worthless, contaminated, dangerous, or harmful, and if it shall appear that any such virus, serum, toxin, or analogous product, for use in the treatment of domestic animals, is worthless, contaminated, dangerous, or harmful, the same shall be denied entry and shall be destroyed or returned at the expense of the owner or importer. That the Secretary of Agriculture be, and hereby is, authorized to make and promulgate from time to time such rules and regulations as may be necessary to prevent the preparation, sale, barter, exchange, or shipment as aforesaid of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and to issue, suspend, and revoke licenses for the maintenance of establishments for the preparation of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, intended for sale, barter, exchange, or shipment as aforesaid. The Secretary of Agriculture is hereby authorized to issue permits for the importation into the United States of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are not worthless, contaminated, dangerous, or harmful. All licenses issued under authority of this Act to establishments where such viruses, serums, toxins, and analogous products are prepared for sale, barter, exchange, or shipment as aforesaid, shall be issued on condition that the licensee shall permit the inspection of such establishments and of such products and their preparation; and the Secretary of Agriculture may suspend or revoke any permit or license issued under authority of this Act, after opportunity for hearing has been granted the licensee or importer, when the Secretary of Agriculture is satisfied that such license or permit is being used to facilitate or effect the preparation, sale, barter, exchange, or shipment as aforesaid, or the importation into the United States of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals. That any officer, agent, or employee of the Department of Agriculture duly authorized by the Secretary of Agriculture for the purpose may, at any hour during the daytime or nighttime, enter and inspect any establishment licensed under this Act where any virus, serum, toxin, or analogous product for use in the treatment of domestic animals is prepared for sale, barter, exchange, or shipment as aforesaid. That any person, firm, or corporation who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not exceeding $1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. That there is hereby appropriated, out of any moneys in the Treasury not other-

wise appropriated, to be expended as the Secretary of Agriculture may direct, for the purposes and objects of this Act, the sum of $25,000, which appropriation shall become available on July first, nineteen hundred and thirteen, and may be expended at any time before July first, nineteen hundred and fourteen;

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SECTION 302 OF THE FEDERAL SEED ACT

SEC. 302. (a) * * *

* * * * * * *

[(e) The provisions of this title requiring certain seeds to be stained shall not apply when such seed will not be sold within the United States and will be used for seed production only by or for the importer or consignee: *Provided,* That the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 of this Act certifying that such seed will be used only for seed production by or for the importer or consignee.]

(e) The provisions of this title requiring certain seeds to be stained shall not apply—

(1) to alfalfa or clover seed originating in Canada, or

(2) when seeds otherwise required to be stained will not be sold within the United States and will be used for seed production only by or for the importer or consignee and the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 certifying that such seed will be used only for seed production by or for the importer or consignee.

FEDERAL PLANT PEST ACT

* * * * * * *

SEC. 103. (a) [No] *Except as provided in subsection (c), no* person shall move any plant pest from a foreign country into or through the United States, or interstate, or accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the secretary may prescribe in the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests.

(b) The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved.

(c) No person shall move any plant pest from Canada into or through the United States or accept delivery of any plant pest moving from Canada into or through the United States, unless such movement is made in accordance with such regulations as the Se-

cretary may promulgate under this section to prevent the dissemination into the United States of plant pests.

SEC. 104. (a) [Any letter] *Except as provided in subsection (b), any letter,* parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is hereby declared to be nonmailable, and will not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except when accompanied by a copy of a permit issue under this Act.

(b) Any letter, parcel, box, or other package from Canada containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.

[(b)] *(c)* Nothing in this act shall authorize any person to open any letter or other sealed matter except in accordance with the postal laws and regulations.

[(c)] *(d)* The prohibitions of this act shall not apply to any employee of the United States in the performance of his duties in handling mail.

* * * * * * *

ACT OF AUGUST 20, 1912

CHAP. 308.—An Act To regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to import or offer for entry into the United States any nursery stock unless and until a permit shall have been issued therefor by the Secretary of Agriculture, under such conditions and regulations as the said Secretary of Agriculture may prescribe, and unless such nursery stock shall be accompanied by a certificate of inspection, in manner and form as required by the Secretary of Agriculture, of the proper official of the country from which the importation is made, to the effect that the stock has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests: [*Provided*] *Provided,* That the Secretary of Agriculture may waive the permit requirement for nursery stock imported or offered for entry from Canada: *Provided further,* That the Secretary of Agriculture shall issue the permit for any particular importation of nursey stock when the conditions and regulations as prescribed in this Act shall have been complied with: *Provided further,* That nursey stock may be imported for experimental or scientific purposes by the Department of Agriculture upon such conditions and under such regulations as the said Secretary of Agriculture may prescribe: *And provided further,* That nursery stock imported from countries where no official

system of inspection for such stock is maintained may be admitted upon such conditions and under such regulations as the Secretary of Agriculture may prescribe: *And provided further,* That the Secretary of Agriculture is authorized to limit entry of nursery stock from foreign countries under such rules and regulations as he may deem necessary, including the requirement, if necessary, that such nursery stock be grown under postentry quarantine by or under the supervision of the United States Department of Agriculture for the purpose of determining whether imported nursery stock may be infested or infected with plant pests not discernible by port-of-entry inspection and provided that if imported nursery stock is found to be infested or infected with such plant pests, he is authorized to prescribe remedial measures as he may deem necessary to prevent the spread thereof.

SEC. 2. That it shall be the duty of the Secretary of the Treasury promptly to notify the Secretary of Agriculture of the arrival of any nursery stock at port of entry; that the person receiving such stock at port of entry shall, immediately upon entry and before such stock is delivered for shipment or removed from the port of entry, advise the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or the District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, of the name and address of the consignee, the nature and quantity of the stock it is proposed to ship, and the country and locality where the same was grown. That no person shall ship or offer for shipment from one State or Territory or District of the United States into any other State or Territory or District, any nursery stock imported into the United States without notifying the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, immediately upon the delivery of the said stock for shipment, of the name and address of the consignee, of the nature and quantity of stock it is proposed to ship, and the country and locality where the same was grown, unless and until such imported stock has been inspected by the proper official of a State. Territory, or District of the United States. *This section shall not apply to nursery stock that arrives from, or is imported from, Canada.*

* * * * * * *

SECTION 4 OF THE FEDERAL NOXIOUS WEED ACT

SEC. 4. [(a) No person shall knowingly move any noxious weed, identified in a regulation promulgated by the Secretary, into or through the United States or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.] *(a) No person shall knowingly move any noxious weed identified in a regulation pro-*

mulgated by the Secretary into or through the United States or interstate, unless such movement is—

(1) from Canada, or authorized under general or specific permit from the Secretary; and

(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may prescribe under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.

(b) The Secretary may refuse to issue a permit for the movement of any such noxious weed when, in his opinion, such movement would involve a danger of dissemination of such noxious weeds into the United States or interstate.

(c) No person shall knowingly sell, purchase, barter, exchange, give, or receive any such noxious weed which has been moved in violation of subsection (a), or knowingly deliver or receive for transportation or transport, in interstate or foreign commerce, any advertisement to sell, purchase, barter, exchange, give, or receive any such noxious weed which is prohibited from movement in such commerce under this Act.

SECTION 7 OF THE EXPORT ADMINISTRATION ACT OF 1979

SHORT SUPPLY CONTROLS

SEC. 7. (a) * * *

* * * * * * *

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, [or] (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, *or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code.)* may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

* * * * * * *

SECTION 161 OF THE ATOMIC ENERGY ACT OF 1954

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to privide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further,* That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. *For purposes of this subsection and of section 305 of Public Law 99-591 (100 Stat. 3341-209, 210), "foreign origin" excludes source or special nuclear material originating in Canada.* The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

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SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term "eligible product" includes a product or service of Israel having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurements as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.

(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES/CANADA FREE-TRADE AGREEMENT.—Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term "eligible product" includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.

* * * * * * *

SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(e) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose

under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

SECTION 5136 OF THE REVISED STATUTES

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

* * * * * * *

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitation and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks or obligations which are insured by

the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary") pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an ageement between the local public agency and the Secretary monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) wil suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by section 6(g) of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said section 6(g) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suf-

fice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-depoist business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank or the Inter-American Investment Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided,* That no association shall hold obligations issued by any or said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided,* That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured

by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the association's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. *A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—*

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Jukon Territory and the Northwest Territories and their successors.

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TITLE 28, UNITED STATE CODE

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PART IV—JURISDICTION AND VENUE

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CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec.

1581. Civil actions against the United States and agencies and officers thereof.
1582. Civil actions commenced by the United States.
1583. Counterclaims, cross-claims, and third-party actions.
1584. Civil actions under the United States-Canada Free-Trade Agreement
1585. Powers in law and equity.

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) * * *

* * * * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise of reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jursidiction over an antidumping countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the United States-Canada Free Trade Agreement and section 516A(g) of the Tariff Act of 1930.

§ 1584. Civil actions under the United States-Canada Free-Trade Agreement

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(d) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

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PART VI—PARTICULAR PROCEEDINGS

CHAPTER 151—DECLARATORY JUDGMENTS

* * * * * * *

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986 [or], a proceeding under section 505 or 1146 of title II, *or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority,* any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * * * *

§ 2643. Relief

(a) * * *

* * * * * * *

(c)(1) Except as provided in paragraphs (2), (3), [and (4)] *(4), and (5)* of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

(3) In any civil action involving an application for the issuance of an order directing the administering authority of the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority, the Court of International Trade may not order declaratory relief.

* * * * * * *

ADDITIONAL VIEWS OF THE HONORABLE HAL DAUB

This Canadian Free Trade Agreement which H.R. 5090 will implement is a step toward a more unified North American market even as the Europeans have set a deadline for nearly complete economic integration in 1992.

It is the most important bilateral agreement the U.S. has ever entered into and will prove its value in the competitive environment we now face. It represents a vital step in advancing North America's competitive abilities, as Europe and our other trading partners gain from advantages of closer cooperation and greater economic muscle.

It is also vital for the success of the Uruguay round of the GATT. The importance of the Agreement to these negotiations is obvious: If two major trading nations which close cultural and economic links like the U.S. and Canada can't agree to reduce trade barriers, what chance will a large group of dissimilar countries have?

Most agricultural interests agree that the direction the Agreement sets for trade expansion is correct and that the agriculture concessions made by both sides, although limited, are balanced.

But is the direct impact on agriculture is limited, the long range importance of the accord to the industry isn't.

If the Uruguay round is endangered by failure of the FTA, so too are the fundamental trade objectives of American agriculture: reduction of worldwide barriers to farm exports and ending the subsidy shootout in which the only winners are buyers snatching up commodities below the cost of production.

In a direct sense, the Agreement, somewhat disappointingly, does not deal adequately with subsidies. For example, in the case of transportation subsidies for wheat, the Canadian Western Grain Transportation Act has only been eliminated for western ports allowing continuation of the subsidies for wheat entering the U.S. from eastern ports.

(It should be noted that Section 304(a) of the bill provides for Presidential initiation of negotiations with Canada to eliminate these transportation subsidies. As the summary of the bill notes, the Committee expects these negotiations to proceed expeditiously.)

Most agree that something as complex as the subsidy issue must ultimately be dealt with in a multilateral forum and as I have said, the Uruguay Round's chances for success would be greatly imperiled by the failure of this Agreement.

Other agricultural concerns have been allayed by recent Administration clarifications of the Agreement.

In Arcitle 705 of the Agreement regarding market access for grains, the Statement of Administration Action notes that Section 22 actions may be taken against a surge of grain imports into the U.S. if there is "substantial change" in such imports. The Adminis-

tration notes that such change need not entail a complete revamping of all support programs.

Furthermore, the Statement notes that the "significant increase" language does not require import penetration to reach any particular level. A relatively "small increase" could be significant since historic Canadian grain shipments have been low.

The Administration also notes that trade actions against the Canadian Wheat Board's import licensing system (a system probably GATT-illegal), will be held in abeyance unless there is evidence the Board is taking advantage of U.S. producers with its licensing practices.

American egg producers were understandably disappointed when they learned that although tariffs will go down on both sides of the border on eggs and egg products, Canadian quotas on our exports will remain. Although the quotas are not ended, they are expanded, and our efforts to eliminate Canada's poultry and egg supply management scheme will continue.

The pork industry is encouraged that the U.S. countervailing duty on the importation of live Canadian hogs will apparently not be disturbed by the Agreement.

Although not a unanimous view in the agriculture community, the Agreement is not criticized so much because it reduces protection at home, but because it did not go far enough in removing trade restrictions.

Support for the agreement amplifies U.S. agriculture's commitment to trade expansion not only with Canada, but around the world, and bodes well for our multilateral efforts to reduce unfair worldwide farm trading policies.

I applaud the efforts of Chairman Rostenkowski, Chairman Gibbons, Members of the Committee and its staff as well as Ambassador Yeutter and the Administration for this historic achievement.

HAL DAUB.

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